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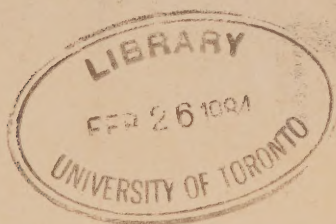
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CORRESPONDENCE

REPORTS OF THE MINISTER OF JUSTICE

ORDERS IN COUNCIL

OTHER THE SUBJECT OF

PROVINCIAL LEGISLATION

1896-1920

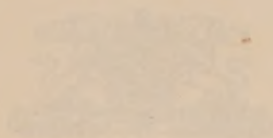
VOLUME 11

CHARLES A. GUNDELL, K.C., LL.B., B.C.L.

PROVINCIAL CLERK

ARTHUR A. CLARKE, Esq., LL.B.

PROVINCIAL CLERK



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PRINTED BY THE GOVERNMENT OF ONTARIO

CORRESPONDENCE

REPORTS OF THE MINISTER OF JUSTICE

AND

ORDERS IN COUNCIL

UPON THE SUBJECT OF

PROVINCIAL LEGISLATION

1896-1920

VOLUME II

COMPILED BY

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OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1922

PREFATORY NOTE

This volume contains all reports on provincial legislation made by Ministers of Justice approved by the Governor in Council, but many documents which would otherwise have been included in the volume were destroyed when the Parliament Buildings were burnt in 1916.

NOTE

No reports were made with respect to the following legislation, viz:

Quebec—8 Geo. V., 1917-18.

Nova Scotia—6 Geo. V., 1916 (except Cap. 22).

Manitoba—8 Geo. V., 1918.

Alberta—1 Geo. V., 1910 (*2nd Sess.*) (except Caps. 9, 11, 43, 48).

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MINISTERS OF JUSTICE AND DEPUTY MINISTER OF JUSTICE,
1896-1920

	From	To
Hon. Sir Oliver Mowat, G.C.M.G., K.C.....	July 13, 1896....	Nov. 17, 1897
Hon. David Mills, K.C.....	Nov. 18, 1897...	Feb. 10, 1902
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Hon. Sir Allen Bristol Aylesworth, K.C.M.G., K.C.....	June 4, 1906....	Oct. 6, 1911
Right Hon. Charles Joseph Doherty, K.C.....	Oct. 10, 1911....	

DEPUTY MINISTER OF JUSTICE

	From	To
E. L. Newcombe, C.M.G., M.A., LL.D., K.C.....	March 19, 1893..	

NOTE

No reports were made with respect to the following legislation, viz:

Quebec—8 Geo. V., 1917-18.

Nova Scotia—6 Geo. V., 1916.

Manitoba—8 Geo. V., 1918.

ONTARIO

59th VICTORIA, 1896

2ND SESSION—8TH LEGISLATURE
(Approved 12 December, A.D. 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 30th November, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts of the Province of Ontario, passed in the fifty-ninth year of Her Majesty's Reign, assented to on the 7th day of April, 1896, and received by the Secretary of State for Canada, on the 22nd day of April, 1896, and he is of opinion, that with the exception of Chapters 16 and 92, all the said Statutes may be left to their operation without comment.

The two excepted Chapters, viz., 16 and 92, will be reported upon separately.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 22 December, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 30th November, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his Report upon Chapter 16 of the Statutes of the Province of Ontario, passed in the fifty-ninth year of Her Majesty's Reign (1896), assented to on the 7th of April, 1896, and received by the Secretary of State for Canada on the 22nd day of April, 1896:—

“An Act respecting the Canadian Historical Exhibition.”

This Act provides for the holding of an Historical Exhibition within the Province of Ontario.

It is enacted by section 25, that the Commissioners shall have the exclusive right of publishing catalogues, photographs, illustrative or descriptive reports relating to the exhibition, except as may be stipulated with individual exhibitors, and may grant assignments and licenses in respect thereof.

This provision appears to be *ultra vires*, because it proposes to give copyright, and the subject of copyright has been committed to the exclusive legislative authority of the Parliament of Canada. The subject of copyright is also regulated by Imperial and Dominion Statutes. The section, however, seems unlikely to do harm, and the undersigned, therefore, and in view of the other important provisions of the Act which seem unobjectionable, considers that it is not necessary to do more than point out the invalidity of the section, and suggest the propriety of its repeal by the Legislature of Ontario at its next session.

The undersigned, therefore, recommends that Chapter 16 be not disallowed, but that a copy of this report, if approved, be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

WILFRID LAURIER,
Acting Minister of Justice.

(Approved 23 March, A.D. 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 15th March, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to state that in his report of 30th November last, upon the Statutes of the Legislature of the Province of Ontario, passed in the fifty-ninth year of Her Majesty's reign (1896), it is stated that Chapter 92 is reserved for a separate report. The said statute was so reserved because the undersigned desired to consider certain representations which had been made to him on behalf of the Chippewa Band of Indians, of Sarnia, to the effect that adequate provision had not been made by the said Act for the assessment and payment of damages suffered by the Indians by reason of the closing of Thistle Street. Upon further inquiry, however, and upon considering the claims of the Indians, the undersigned has reached the conclusion that the Act contains reasonable provision for the ascertainment and payment of all such damages, and he accordingly recommends that the Act be left to its operation.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60th VICTORIA, 1897

3RD SESSION—8TH LEGISLATURE

(Approved 8 November, A.D. 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Ontario, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 23rd day of April, 1897, and has the honour to report that with the exception of the statutes herein specially referred to, they may be left to their operation without any observations.

The following statutes, however, appear to call for some observations:—

Chapter 3. "An Act to provide for the Consolidation of the Statutes of Ontario."

This Statute provides for the bringing into effect, by means of a proclamation of the Lieutenant Governor in Council, a consolidation of the Statutes of the Province of Ontario, which has been prepared or is being prepared by Commissioners appointed for that purpose.

It is provided that the Commissioners in consolidating the Statutes may make such alterations in their language as are requisite in order to preserve a uniform mode of expression, and also such minor amendments as are necessary to bring out more clearly what they deem to be the intention of the Legislature, or to reconcile seemingly inconsistent enactments, or to correct clerical or typographical errors. It is also enacted that these Revised Statutes shall not be held to operate as new laws, but shall be construed and shall have effect as a consolidation of the law as contained in the Acts and parts of Acts repealed, and for which the Revised Statutes are substituted.

It does not seem to be intended, therefore, that the Commissioners shall in the revision make any substantial change in the Statute law of the Province. The various enactments with which the Commissioners have to deal have, from time to time, as they were assented to, been considered by the Government of Canada in the manner

provided by the Constitution, and they have been left to their operation generally without comment, but in many cases subject to remarks which the Ministers of Justice have thought proper to make with regard to them.

The undersigned recommends that the Act be left to its operation, the consolidated Acts being subject to the observations which were made with respect to the Acts consolidated when these were originally enacted.

Chapter 9. "An Act respecting the Fisheries of Ontario."

This Chapter appears to contain a consolidation of the previous Statutes of the Province respecting fisheries. It does not in various respects conform with the views heretofore urged on behalf of Your Excellency's Government in respect of Provincial jurisdiction in the matter of fisheries, nor is it in all respects consistent with the judgment of the Supreme Court of Canada recently pronounced upon the fisheries reference as that judgment has been understood, but the whole question is now pending before the Judicial Committee of the Privy Council upon appeals from the judgment of the Supreme Court of Canada which have been argued.

The present Statute is not to go into operation until a day named by the Lieutenant Governor in Council, and the undersigned assumes that the Provincial Government does not intend to give effect to the Statute until the Judicial Committee has given judgment. He considers, therefore, without on the part of the Government admitting the legislative authority of the Province with respect to the various provisions of this Statute, that the Statute may in the meantime be left to such operation as it may have. It may be necessary, however, to make a further recommendation with respect to this Statute in case judgment be pronounced by the Judicial Committee within the time limited for disallowance.

Chapter 14. "An Act to make certain amendments to the Statute Law."

Section 1 provides that in any action respecting property or civil rights, whether for damages or for specific relief, the judgment of the Court of Appeal for Ontario shall be final, except in certain cases therein mentioned.

While it is quite proper for the Legislature to declare that such judgments shall be final as far as provincial jurisdiction is concerned, the undersigned desires to point out that it is only the Parliament of Canada which can give or take away the right of appeal to the Supreme Court of Canada, and that the provision is *ultra vires* in so far as it intends to affect the Royal Prerogative with respect to appeals or any right of appeal to which a party may be entitled under authorized Dominion legislation.

Chapter 38. "An Act to consolidate and amend the law respecting Building Societies and other Loan Corporations."

Section 50 provides that this Act shall for all purposes extend to aliens.

Chapter 96. "An Act to incorporate the Fort Francis and Pacific Railway Company."

Chapter 97. "An Act to incorporate the Petewawa Lumber, Pulp and Paper Company."

Chapter 98. "An Act to incorporate the Seine River, Foley and Fort Francis Telegraph and Telephone Company of Ontario."

Each of these Chapters contains a section providing that aliens may be shareholders in the Company. It is a question whether this provision is within the competence of a Provincial Legislature, as the subjects of naturalization and aliens are named amongst the matters belonging to the exclusive legislative authority of the Parliament of Canada.

The undersigned does not consider, however, that the Statutes containing these provisions should on that account be disallowed.

Chapter 106. "An Act to enable Edward Spencer Jenison to develop and improve a Water Privilege on the Kaministiquia River."

This Chapter contains several provisions authorizing the Company to erect dams or weirs in the Kaministiquia and Mattawin Rivers, and to divert the chan-

nels and waters of these rivers. Such provisions are subject to the observations which have been heretofore stated as to the authority of a Provincial Legislature to legislate with regard to the beds and waters of the rivers, which are claimed to be subject to the exclusive legislative authority of Parliament, but following the course heretofore pursued in regard to such legislation and in view of the question now pending before the Judicial Committee of the Privy Council, the undersigned recommends that the Statute be not disallowed.

The undersigned, therefore, recommends that the Statutes mentioned and referred to in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

61st VICTORIA, 1898

4TH SESSION—8TH LEGISLATURE
(Approved 9 September, 1898)

DEPARTMENT OF JUSTICE, 23rd August, 1898.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his Report upon the Statutes of the Province of Ontario, passed in the sixty-first year of Her Majesty's reign (1898), assented to on 17th January, 1898, and received by the Secretary of State for Canada on the 24th February, 1898, as follows:—

Chapter 33. "An Act to prevent the spread of the San José Scale."

Section 3 provides that no person shall import or cause to be imported into the Province of Ontario for any purpose any plant infested with scale.

The undersigned considers that the validity of this provision is questionable, but having regard to the object of the legislation, he does not recommend its disallowance.

Chapter 59. "An Act respecting the Chatham City and Suburban Railway Company," and

Chapter 63. "An Act to incorporate the Smith's Falls, Rideau and Southern Railway Company."

Each of these Statutes contains a provision in effect that, notwithstanding any other provision to the contrary in any other Act, the company's railway may cross the railway of any other company upon a level therewith, with the consent of such other company, or with the authority of the Railway Committee of the Privy Council of Canada.

This provision may doubtless have its operation with regard to railways within the exclusive legislative authority of the Province, but it should not be construed to apply to railways crossing each other, either one of which is within the legislative authority of Parliament, as in such cases Parliament has assumed exclusive authority. The Railway Act provides that such railways may not cross each other except by leave of the Railway Committee of the Privy Council, and it is doubtful whether the provision in question is consistent in this respect with the Railway Act. The undersigned has no reason to suppose, however, that the Legislature intended the provision in question to have effect except to the limited extent which he has indicated, and he, therefore, considers that the Act should not be disallowed.

The undersigned recommends that the remaining Statutes, and also those specially mentioned in this report, be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

62nd VICTORIA, 1899

2ND SESSION—9TH LEGISLATURE.

(Approved 18 November, 1899.)

DEPARTMENT OF JUSTICE, OTTAWA, 11th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of the province of Ontario, passed in the 62nd year of Her Majesty's Reign (1899), received by the Secretary of State for Canada on 15th April last, and he has the honour to report that these statutes may be left to their operation without comment, with the exception of the following as to which the undersigned considers it necessary to make some remarks.

Chapter 10. "An Act to amend the Mines Act."

By section 2 of this statute it is provided that no person, firm, syndicate or company conducting a mining business of any sort or kind in the province shall use the word "bureau" to describe the name or title under which such business is carried on.

This section is subject to two objections—

(1) That it is a regulation of trade and commerce, and such regulations can only be competently made by the parliament of Canada, and

(2) Parliament having authority to incorporate companies where their objects are not merely provincial, must have the right to assign to the company such name as it sees fit.

The undersigned apprehends that a provincial legislature cannot limit parliament in the choice of a name, and that without infringing upon the authority of parliament in the regulation of trade and commerce, a provincial legislature cannot deny to a company incorporated and named by parliament, the right to carry on business in the province merely because the name of the company is not satisfactory to the legislature of the province.

The undersigned does not consider, however, that the objections so stated are in the present case of sufficient importance to justify the disallowance of the statute which contains many other unquestionable provisions.

Chapter 34. "An Act to improve the law relating to the Fisheries of the province."

Sections 6, 7 and 14 of this chapter seem to affect somewhat the regulation of the Fisheries.

The undersigned apprehends that it is now well understood that a provincial legislature has no right to regulate the time or the mode of fishing, and that provincial enactments affecting these matters must be *ultra vires*. He conceives, however, that so far as the present statute is concerned any question which may be raised may be better disposed of by the courts than by action of Your Excellency in Council.

Chapter 92. "An Act to incorporate the Algoma Central Railway Company."

Chapter 93. "An Act to incorporate the Bruce Mines and Algoma Railway Company."

Chapter 94. "An Act to incorporate the Haliburton, Whitney and Mattawa Railway Company."

Chapter 98. "An Act to incorporate the Nipigon Railway Company."

Chapter 100. "An Act to incorporate the North Lanark Railway Company."

Chapter 103. "An Act to incorporate the Thessalon and Grand Portage Railway Company."

Chapter 104. "An Act to incorporate the Thunder Bay, Nipigon and St. Joe Railway Company."

Chapter 105. "An Act to incorporate the Toronto, Lindsay and Pembroke Railway Company"; and

Chapter 106. "An Act to incorporate the Worthington and Onaping Railway Company."

These are statutes incorporating companies, and each of them contains a provision in effect that aliens and companies incorporated abroad may be shareholders in the company and entitled to vote on their shares equally with British subjects, and also eligible to office as directors of the company.

Objections from the Dominion point of view to similar provisions have been frequently stated heretofore by the undersigned or his predecessors in office, and the undersigned does not consider it necessary at present to do more than call attention to previous reports upon similar statutes.

For the reasons above stated the undersigned does not consider it expedient to recommend the disallowance of any of these statutes.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Respectfully 'submitted,

DAVID MILLS,

Minister of Justice.

63rd VICTORIA, 1900

3RD SESSION—9TH LEGISLATURE.

Mr. W. R. P. Parker to the Right Hon. Sir Wilfrid Laurier, G.C.M.G., M.P., P.C.

TORONTO, CANADA, 13th September, 1900.

DEAR SIR,—Herewith inclosed is a copy of a petition forwarded to the Honourable the Secretary of State for consideration by your government.

In view of the urgency and importance of the matter, I am sending you this copy, and I would also call your attention to the parallel Act passed by your government in 1897, being 60-61 Vic., chap. 17. Upon comparing the two Acts, and bearing in mind that the nomenclature was changed while the bill was passing through the Ontario legislature, the license fee sought to be imposed by the Ontario legislature is in substance and reality an export duty, as appears on the face of the Act, but more clearly by the declaration of the Ministers in respect thereto.

Trusting that this will receive your early and serious consideration.

I am, yours truly,

W. R. P. PARKER.

Petition from W. R. P. Parker and others to His Excellency the Governor General in Council.

To His Excellency the Right Honourable Gilbert John Elliot, Earl of Minto, G.C.M.G., Governor General of the Dominion of Canada, in Council:

THE PETITION OF THE UNDERSIGNED,

SHOWETH:—

1. That your petitioners are the owners of or interested in nickel or nickel and copper properties in the districts of Nipissing and Algoma, in the province of Ontario.

2. For the most part the said lands were granted to your petitioners or to their predecessors in title prior to the year 1891, and in all cases the said lands were so granted in fee simple as mining lands, or leased by letters patent under the great seal of the province of Ontario.

3. That by the Act of the legislature of the province of Ontario, passed in 1891 (known as 54 Vic., ch. 8) certain royalties were imposed on all ores and minerals mined, wrought or taken from the lands located, sold and granted or leased by the Crown after the passing of the Act, that is, after the 4th day of May, 1891, and in the following session of the legislature there was by The Mines Act of 1892 (being 55 Vic., ch. 9) a declaration by Her Majesty by and with the advice and consent of the legislature in the words following:—

“All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been reserved, imposed or made payable upon or in respect of any ores or minerals extracted from the lands granted by such patents and lying within this province, are hereby repealed and abandoned, and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty.”

And the said declaration has been continued in the various enactments in regard to mining laws subsequently passed by the province of Ontario, and is contained in section 3 of the present Mines Act (being Revised Statutes of Ontario, chapter 36) in the following words:—

“That such lands, ores and minerals shall be free and exempt from every such royalty, tax or duty.”

4. That large amounts of money have been expended and valuable rights acquired on the faith of the said declaration by the legislative assembly of the province of Ontario and of the said unconditional patents and leases.

5. That a large part of the patented lands of the districts of Nipissing and Algoma are held under the Land Titles Act in force in the province of Ontario, *i.e.*, under what is known as the Torrens System of Land Titles.

6. The said Land Titles Act declares:—

“The first registration of any person as owner of land (in this Act referred to as first registered owner) with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject as follows:—

1. To the incumbrances, if any, entered on the register.

2. To such liabilities, rights and interests, if any, as are by this Act declared for the purposes of the Act not to be incumbrances, unless under the provisions of this Act, the contrary is expressed on the register.

3. Where such first registered owner is not entitled for his own benefit to the land registered, then as between him and any person claiming under him,

to any unregistered estates, rights, interests or equities to which such persons may be entitled; but free from all other estates and interests whatsoever, including estates and interests of Her Majesty, her heirs and successors, which are within the legislative jurisdiction of this province."

7. That upon the faith of the rights acquired under the said Act and of the absolute title so guaranteed and vested, transactions involving large sums have been completed and large sums of money invested.

8. That on the 30th day of April, 1900, the Royal Assent was given to an Act passed at the last session of the legislative assembly to amend the Mines Act by which section 1 of 63 Vict. (Ont.), Ch. 13, what had been section 3 of the Mines Act (referred to in paragraph 3 hereof) is repealed, including the said declaration that "such lands, ores and minerals shall be free and exempt from every such royalty, tax or duty."

9. Sections 4, 6, 7, 9, 10, 11 and 13 of the said Act to amend the Mines Act (being 63 Vict. (Ont.), Ch. 13, provide as follows:—

"4. No owner of any mine shall carry on the business of mining for any ore or mineral in respect of which a license fee is imposed without first taking out a license under the provisions of this Act.

6. (1) The fee chargeable for a license shall be \$10, unless a greater amount is payable as provided in the next subsection.

(2) A second or subsequent license shall not be issued under this Act until all fees provided in section 7 of this Act in respect of the property proposed to be covered by such license have been paid, and such fees shall constitute the sum payable for the issue of any second or subsequent license in respect of such property.

7. Every person carrying on the business of mining in this province shall pay a license fee upon the gross quantity of the ores or minerals mined, raised or won during the preceding year from any mine worked by him, to be paid to the treasurer of the province for the use of the province at the following rates, or such less rates as may be substituted by proclamation of the Lieutenant Governor, namely:—

(a) For ores of nickel, \$10 per ton, or \$60 per ton if partly treated or reduced;

(b) For ores of copper and nickel combined, \$7 per ton, or \$50 per ton if partly treated or reduced.

9. (1) The owners of the mine shall be jointly and severally liable to the Crown for the amount of the license fees payable in respect thereof, and the same shall be recoverable by action at the suit of Her Majesty on behalf of the province, if not paid to the treasurer of the province on or before the 30th day of April in each year.

(2) The fees payable under this Act shall be a charge upon the lands (described in the license) on which the mine is situate and in respect of which such fees are payable, and shall have priority over all other charges thereon; and in case the same are not duly paid, proceedings may be taken for and on behalf of Her Majesty to foreclose the estate and right of all persons claiming any interest in the said property.

(3) In any action under this section Her Majesty's Attorney General shall have the right either before or after the trial to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action.

10. Where ores or minerals that have been mined, raised or won in this province are smelted or otherwise treated in the Dominion of Canada by any process so as to yield fine metal, or any other form of product of such ores or

minerals suitable for direct use in the arts without further treatment, then and in every such case the fees provided herein or such proportion thereof as may be fixed by the Lieutenant Governor in Council shall be remitted, or if collected shall be refunded under such regulations as the Lieutenant Governor in Council may prescribe.

11. Any person required under this Act to take out a license, who works or permits to be worked any mine without a license under this Act covering such mine shall forfeit to Her Majesty the sum of \$50 for every day during which he, without the said license, works or permits such mine to be worked, such sum to be recovered with costs by an action on behalf of Her Majesty in any court of competent jurisdiction.

13. (1) The provisions of sections 4 to 12 of this Act or of any of them may from time to time in whole or in part be brought into force and effect by proclamation of the Lieutenant Governor in Council, and until so brought into force shall not take effect, and the Lieutenant Governor may by the proclamation bringing any of such provisions into force or by subsequent proclamation, substitute any less fee, for any fee imposed by section 7 of this Act, and may also by proclamation direct that such proportion of the said fees as may be deemed advisable shall, subject to such conditions as may be imposed, be remitted in respect of ores or minerals refined in the United Kingdom or in any British colony or dependency.

(2) No return shall be made in respect of any fees paid, unless within twelve months of the time of payment, application is made therefor, and satisfactory evidence is furnished showing that the applicant is entitled to the relief claimed."

10. The Bill to amend the said Mines Act as introduced in the said legislative assembly provided for a tax not only upon nickel and copper ores but upon all other ores, but the said tax, which was a tax within the meaning of the said section 3 of the Mines Act repealed as aforesaid, was abandoned after introduction, and what is tantamount thereto is now under the name of a license fee authorized in respect only of ores of nickel or ores of nickel and copper combined.

11. In the speech from the Throne delivered by His Honour the Lieutenant Governor at the opening of the session of the Ontario legislature on February 14, 1900, these words were used:

"It is the object and policy of my government to utilize all the natural resources of our country so as to afford the largest scope for the profitable employment of capital and labour and thus furnish the markets of the world with finished articles instead of raw materials."

12. In introducing the said bill and in moving the second reading thereof in the legislative assembly of the province of Ontario the Honourable the Commissioner of Crown Lands stated that the object of such legislation was not for the purpose of raising a revenue.

13. In assenting to the said Act and the other Acts passed at the same session of the Ontario legislature, His Honour the Lieutenant Governor in the speech from the Throne said:—

"I hope that the efforts of the legislature to promote the manufacture of refined nickel in the province in the early future will be successful."

The only legislation in regard to refining of nickel passed at the said session of the Ontario legislature is that contained in the above-mentioned Act.

14. Your petitioners submit that it therefore appears that the said Act was not passed in the exercise of any power or jurisdiction vested in the Ontario legislature, but was passed for the express purpose and with the design of regulating the trade

and commerce of Canada, and also for the purpose of authorizing the Lieutenant Governor in Council to impose what in reality is an export duty on nickel and nickel copper ore and matte exported from the Dominion of Canada.

15. The imposition of the said license fees, unless same are remitted pursuant to section 13 of the said Act, would be fatal to the nickel industry of the districts of Algoma and Nipissing and the menace to the said industry contained in the said Act is extremely prejudicial.

16. That if the said Act is not disallowed by Your Excellency the security of property rights in the province of Ontario will be greatly depreciated and the difficulties in securing the investment of British and other capital in Canadian enterprises will be correspondingly increased; in fact if the provisions of sections 4 to 11 of the said Act are put in operation and become effective and the license fees mentioned in section 7 are exacted from the owners of lands granted prior to the passing of the said Act, no investment of British or foreign capital in Canada could thereafter be considered secure.

17. Acts of local legislatures are by the British North America Act subject to disallowance by Your Excellency in Council within one year from the passing thereof, but your petitioners are advised that if the said Ontario Act is not disallowed Your Excellency in Council will have no authority to disallow Orders in Council which may subsequently be passed pursuant to the said Act.

18. The said Act if not disallowed by Your Excellency or declared void by the courts would authorize the Lieutenant Governor in Council:—

(a) To impose license fees which would practically amount to the confiscation of your petitioners' lands without any compensation therefor.

(b) To impose export duties upon ores of nickel and ores of copper and nickel combined and upon mattes thereof, in contravention of the provisions of the British North America Act by which such power is exclusively conferred on the Dominion parliament.

(c) To enforce such export duties as a charge upon the lands from which such ores are mined, raised or won.

(d) To discriminate against British industry and enterprise.

(e) To prevent matte produced from Ontario nickel ores or copper and nickel ores being treated in any refinery situate in Great Britain or any other part of the British empire outside of Canada.

19. If not disallowed the said Act will tend to discourage and prevent the investment of British capital in the Canadian nickel industry, in the success of which your petitioners are greatly interested, and will also assist in directing attention, capital and enterprise to the development and working of the nickel deposits of New Caledonia, Germany, Norway and Spain.

20. The injurious effect of the said Act (if not disallowed) upon the trade and commerce and also upon the credit of the Dominion of Canada will be exceedingly great.

21. Wherefore your petitioners pray that the said Act, being 63 Vic. (Ont.), chap. 13, entitled "An Act to amend the Mines Act," may be disallowed pursuant to the authority vested in Your Excellency in Council by the British North America Act.

And your petitioners will ever pray.

A similar petition was also received from Messrs. F. F. Lemieux, Geo. J. McCain, Thos. Clemow and 28 others.

From the Secretary of the Canadian Manufacturers' Association to the Hon. the Secretary of State.

TORONTO, 29th October, 1900.

DEAR SIR,—The recent legislation passed by the province of Ontario providing for the taxation of extra-provincial companies is causing widespread dissatisfaction among many manufacturers doing business in this province.

This dissatisfaction is particularly keen in the case of those companies that are incorporated under Dominion charter, because they believe that in seeking incorporation in this way that they would be able to do business in any part of the Dominion, and so feel especially grieved that they should be compelled to pay this tax now.

It seems to operate most injuriously in the case of those manufacturers situated in the province of Ontario and doing business under Dominion charter, who have been carrying on a manufacturing business in this province for years, and consequently feel that this tax now placed upon them is unfair, and places them at a disadvantage to their other competitors.

Our association therefore is anxious to find out how far this Act is going to operate to the prejudice of companies of this kind, and for this purpose I write to obtain from you, if possible, a list of the companies that have been incorporated under Dominion charter.

I am not sure that you have this list in any form that is readily accessible, but if you have, I would be pleased to see a full list. If, however, you have not, I am particularly interested in securing a list of the manufacturing companies that have been incorporated under Dominion charter, and would be particularly obliged if you could favour me with this.

On behalf of the Canadian Manufacturers' Association.

Your obedient servant,

T. A. RUSSELL,
Secretary.

(Approved 9 October, A.D. 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 24th September, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that there has been referred to him copies of the petition addressed to Your Excellency in Council which was forwarded to the Prime Minister by Mr. W. R. P. Parker, Toronto, apparently on behalf of the owners or others interested in nickel or nickel and copper property in the district of Nipissing and Algoma, in the province of Ontario, in which the petitioners pray that the Act, 63 Victoria, chapter 13, province of Ontario, entitled "An Act to amend the Mines Act," may be disallowed.

I have the honour to recommend that before any further action be taken a copy of this petition be referred to the Lieutenant Governor of Ontario for the observations of his Government thereon.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to the Deputy Minister of Marine and Fisheries

DEPARTMENT OF JUSTICE, OTTAWA, 22nd November, 1900.

SIR,—I have the honour to call your attention to an Act passed at the last session of the Ontario legislature, 63 Vic., Ch. 50, intituled: "An Act respecting the Fisheries of Ontario."

You will observe that there are a number of provisions in this Act, as for instance, sections 13, 34, 38 and 39, *et seq.*, which profess to regulate the provincial fisheries, and seem, therefore, to be *ultra vires* under the decision of the judicial committee in the fisheries case. It will be necessary shortly for the Minister of Justice to report upon this statute to His Excellency in Council, and attention will, of course, be drawn to the unconstitutionality of these provisions, but what I would like first to ascertain is whether these so far interfere with or affect the policy of your department, or the administration of the fishery laws and regulations of the Dominion, as in the opinion of the Minister of Marine and Fisheries to call for disallowance. In the absence of necessity for the exercise of that power it is quite likely that this department might perhaps be satisfied to call attention to these provisions, point out their invalidity and suggest their repeal, leaving it to the persons affected, in case the province should retain these provisions, to set up their rights in the courts. I will withhold further action with regard to this statute until I receive the views of your department, but this matter should be attended to without undue delay as the time for disallowance is running, and a proposition to disallow would doubtless lead to some preliminary correspondence with the provincial authorities.

I have, &c.,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Deputy Minister of Marine and Fisheries to the Deputy Minister of Justice.

DEPARTMENT OF MARINE AND FISHERIES, OTTAWA, 28th December, 1900.

SIR,—I have the honour to acknowledge the receipt of your letter of the 22nd ultimo, calling the attention of this department to an Act passed at the last session of the Ontario legislature, 63 Vic., Ch. 50, intitled: "An Act respecting the Fisheries of Ontario"; and asking whether certain specified sections of this Act, which profess to regulate the provincial fisheries, so far interfere with or affect the policy of this department or the administration of the fishery laws and regulations of the Dominion as, in the opinion of the Minister of Marine and Fisheries, to call for disallowance.

Having carefully looked into the matter, I am, by direction to state that this department is of opinion that the provisions of the Act to which you refer are calculated seriously to interfere with the policy of this department, and the administration of the fishery laws and regulations. The position this department has always taken is, that under the decision of the Privy Council, the exclusive power to make regulations is vested in them, and there is no co-ordinate provincial power, nor any power in the local government to authorize interference with the regulations made by this department. If such power existed and the provincial authorities could interfere with the close seasons as established by this department, or ignore the regulations in whole or in part, the entire policy of this department would probably be defeated.

In regard to the minimum size of fish allowed to be taken, the power to regulate is clearly vested in the Dominion and not in the provincial authorities, and for this and other reasons it would therefore seem to be advisable to disallow the Act, rather than to leave it to the persons affected to set up their rights in the courts, in case the province should retain these provisions after you had pointed out their invalidity and suggested their repeal. That the Dominion government should not rest satisfied with a mere protest in the present case is evident from the fact that the provincial authorities seem to be of opinion that regulations defining the close season and the implements with which fish should be taken are all that are vested in the Dominion, and that the powers vested in the Dominion may be indirectly defeated or rendered nugatory by the exercise of similar powers on the part of the province in its capacity as proprietor

or owner of the fishery. The department holds as a matter of policy that the exclusive power to regulate the fisheries must be preserved, and must not be permitted to be infringed upon. It would be better at the outset to let it be clearly and firmly known what the position of the Dominion government is on this point.

I am, &c.,

F. GOUDREAU,

Deputy Minister of Marine and Fisheries.

Copy of a proposed Report of the Minister of Justice, submitted as a statement of objections to the Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 22nd November, 1900.

The undersigned has had under consideration chapter 24 of the statutes of the province of Ontario, passed in the sixty-third year of Her Majesty's reign (1900), assented to 30th April, and received by the Secretary of State on 18th May, intituled "An Act respecting the Licensing of Extra Provincial Corporations."

The term "extra provincial corporations" is defined by this Act to mean "a corporation created otherwise than by or under the authority of an Act of the legislature of Ontario."

Section 2 mentions certain classes of extra provincial corporations which are not required to take out any license under the Act. These include corporations licensed or registered under the provisions of "The Ontario Insurance," or of "The Loan Corporations Act," and corporations liable to payment of taxes imposed by chapter 8 of the Ontario statutes for 1899, intituled "An Act to supplement the revenues of the Crown in the province of Ontario."

Section 3 mentions certain classes of extra provincial corporations which are required to take out license under the Act. These include corporations other than those mentioned in section 3 created by or under the authority of (a) an Act of the legislature of the old province of Canada, or by royal charter of the government of that province authorized to carry on business in Upper Canada but not carrying on business in Ontario at the date of the commencement of this Act; (b) an Act of the Dominion of Canada and authorized to carry on business in Ontario, and (c) extra provincial corporations not coming within any of the classes enumerated in sections 2 and 3, which latter would include corporations created and authorized by the parliament of the United Kingdom.

It is provided by section 6, as to extra provincial corporations required under the provisions of section 3 to take out a license, that none of these shall carry on within Ontario any business, unless and until a license under this Act so to do has been granted, and unless such license is in force; provided that the taking of orders for or the buying or selling of goods by travellers or by correspondence, if the corporation have no resident agent or representative and no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of the Act.

Section 7 enacts that an extra provincial corporation required to take out a license may apply to the Lieutenant Governor in Council for a license to carry on its business or part thereof and exercise its powers or part thereof in Ontario, and upon the granting of such license such corporation may thereafter, *while such license is in force*, carry on in Ontario the whole or such parts of its business and exercise in Ontario the whole or such parts of its powers as may be embraced in the license, subject, however, to the provisions of the Act, and to *such limitations and conditions as may be specified in the license*. The following section authorizes the Lieutenant Governor in Council to make regulations respecting, among other things, the *forms*

of licenses, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under the Act, and also to make orders with respect to particular cases where the general regulations may not be applicable, or where they would cause unnecessary inconvenience or delay.

It is to be observed here that these corporations are forbidden by the Act to do business in the province without license, and although it would appear from the above-mentioned sections and section 4 that it would be the duty of the provincial government to issue licenses to such corporations upon their complying with the provisions of the Act and the regulations, yet the licenses may be subject to limitations and conditions, the nature of which are not stated in the Act, and which depend upon regulations to be made from time to time by the Lieutenant Governor in Council; and further, that special limitations and conditions may be imposed in particular cases, so that there must be considerable uncertainty as to how far a corporation would be licensed in any case to carry on the business intended or authorized by its charter.

Section 13 authorizes the Lieutenant Governor in Council to suspend or revoke any license in whole or in part for default in observing or complying with the limitations and conditions of the license.

Section 14 provides a penalty against any corporation required to take out a license, for carrying on business without such license and renders such corporations while unlicensed, incapable of maintaining any action, suit or other proceeding in the courts of Ontario in respect of any contract made within the province or in connection with business carried on contrary to the provision of section 6.

Section 18 establishes fees to be taken upon the granting of licenses.

The question as to the right of a provincial legislature to limit the authority granted to a corporation by the Imperial parliament or the parliament of Canada has heretofore on several occasions been considered by the government of Canada.

The undersigned apprehends that no argument is required to establish the invalidity of such a provincial Act so far as concerns the powers conferred by the parliament of the United Kingdom, the Acts of which, where intended to apply to a colony or province, must in all cases be paramount. The undersigned conceives that it is equally beyond provincial authority to prevent or in anywise limit the exercise of the powers of a company conferred by the parliament of Canada relating to any of the subjects specially enumerated in section 91 of the British North America Act. In both these cases the incompetency of the provincial legislatures has been already affirmed by the Dominion government.

Your Excellency's government is now, however, perhaps for the first time called upon to deal with a provincial Act which is clearly intended to prevent all Dominion corporations, save those falling within the classes mentioned in section 2 of the present Act, from doing any business within the province, unless thereunto licensed by provincial authority, and which is intended further to confer a discretion upon the provincial government as to the conditions, terms and limitations upon which such licenses may be granted, the exercise of which discretion may involve limitation of the powers which parliament has conferred and requirements which may render the execution of those powers burdensome or unprofitable.

In 1887, Sir John Thompson, then Minister of Justice, had occasion to report upon an Act of the province of Quebec, 49-50 Vic., Ch. 39, intituled: "An Act to authorize certain corporations and individuals to loan and invest money in this province." He stated that the right of the Dominion parliament to establish a corporation having powers and civil rights in more than one province had been most conclusively established; that the power of provincial legislatures in regard to the establishment of corporations was limited by section 92 of the British North America Act to the incorporation of companies with provincial objects and matters of a merely local and private nature in the province, while the powers of the Dominion parliament

extend to all matters not coming within the classes of subjects assigned exclusively to the legislatures, and that it followed, therefore, that a statute relating to the incorporation of a company which was beyond the authority of a provincial legislature would be within the competency of parliament. The minister stated further that the right of a corporation so created by the federal authorities to hold lands or to make contracts in the several provinces in which it is established as a civil person might be dependent upon the general law of each province as to corporations, but could not, in his opinion, be restricted by any provincial legislation aimed at corporations established by the federal parliament, and he quoted high judicial decisions in support of these views. Sir John Thompson would have recommended the disallowance of this statute had it contained the provisions which the present statute does prohibiting Dominion companies from doing business without a license. He stated as the ground for refraining to recommend disallowance that while the statute empowered the provincial secretary to issue licenses to the companies referred to and proposed to convey authority to such companies to do business under such licenses, it did not contain any negative provision forbidding the companies to do business without license, and that it did not establish any penalty for non-compliance. The minister considered, therefore, that the Act seemed incapable of doing harm or obstructing the operation of companies duly authorized or doing business within the scope of their lawful constitutions, except in so far as it might raise doubts as to the necessity for such a license. This report of the Minister of Justice was approved by His Excellency in Council on 9th August, 1887, and is printed on pages 339 to 342 of the compilation of Dominion and provincial legislation, 1867-95.

In 1891 upon the recommendation of Sir John Thompson a statute of the province of Manitoba, 53 Vic., Ch. 23, intituled: "An Act to authorize companies, institutions or incorporations incorporated out of this province to transact business therein" was disallowed, and the minister in his report recommending disallowance referred to his previous report upon the Quebec statute, 49-50 Vic., Ch. 39, and he remarked that for the reasons therein stated the Act then under review, in so far as it related to companies having the powers mentioned in the Act by virtue of legislation from the parliament of the United Kingdom or from the parliament of Canada, was *ultra vires* of a provincial legislature, and upon that reason, as well as the further reasons stated in his report, he based his recommendation. The report of the Minister of Justice was approved by His Excellency in Council, 4th April, 1891, and is printed in the volume aforesaid at pages 941 to 945.

In 1896 another statute of the province of Manitoba, 58 Victoria, cap. 4, intituled "An Act respecting corporations incorporated out of Manitoba," was disallowed by His Excellency in Council because of the incompetency of the legislature to limit or forbid the exercise of powers lawfully conferred by the parliament of Canada. Reports of the Ministers of Justice of the time holding these views were approved by His Excellency in Council on 8th November, 1895, and 12th March, 1896. These reports and the correspondence connected therewith are printed at pages 1005 to 1010 of the above-mentioned volume.

Afterwards still another statute was enacted by the legislative assembly of Manitoba, 60 Vic., cap. 2, containing all the provisions which occasioned the disallowance of the Act 58-59 Vic., cap. 4. Sir Oliver Mowat, then Minister of Justice, in his memorandum of 15th November, 1896, pointed out that it had been held that the Dominion had power to incorporate a company for the whole Dominion, though the objects of the company were provincial, a provincial legislature having no power to authorize a company to do business outside of the province. He stated that it was unnecessary at that time to express any opinion as to whether a provincial legislature might require that a license should be obtained by such company before it could do business in the province, but that there could be no doubt that where a company was incorporated by the Dominion in the exercise of any one or more of its special and exclusive powers of legislation enumerated in section 91 of the British North America

Act, a provincial legislature had no authority to impose any such conditions. This Act was afterwards disallowed upon the report of the undersigned concurring in the view of his predecessor, which report was approved by His Excellency in Council on 14th March, 1898. The particular point upon which the disallowance of the two latter statutes proceeded was the incapacity of a provincial legislature to limit or affect the operation of Dominion statutes enacted in the execution of any of the powers particularly enumerated in section 91. The present statute is open to the same objection, although not so far reaching, because under section 2 of the Act in question some Dominion companies have been excepted from the operation of the Act.

It has been the policy of the parliament and government of Canada for many years, in the exercise of undoubted constitutional rights, to incorporate companies for the purpose of doing business throughout the Dominion or in two or more provinces thereof, not only as to matters relating strictly to the enumerated subjects of Dominion jurisdiction, but also as to those matters which, if limited to the territory of any one province, would be within the exclusive legislative authority of that province. This jurisdiction in the Dominion arises, in the opinion of the undersigned, not only under the general authority of the Dominion relating to the peace, order and good government of Canada, but also as affecting the regulation of trade and commerce, a subject specially assigned to the exclusive legislative authority of Canada.

In the case of the Citizens' and Queen Insurance Co. vs. Parsons (1 Cartwright, at page 278), the Judicial Committee of the Privy Council held that the regulation of trade and commerce would include the regulation of trade in matters of interprovincial concern, and, it may be, would include the general regulation of trade affecting the whole Dominion. It has also been held by the same authority that the parliament of Canada alone can constitute a corporation with power to carry on business throughout the Dominion (Loranger vs. Colonial Building and Investment Association, 3 Cartwright at page 128). This latter statement refers to companies incorporated not under the powers conferred within the scope of any of the subjects specially enumerated in section 91, but to companies the incorporation of which but for the fact that their powers or capacity to do business are to extend beyond the limits of any one province, would be solely within provincial authority.

In the case of the liquor prohibition appeal (1896 Appeal Cases at page 363) Lord Watson delivering the opinion of the committee and referring to the Citizens' and Queen Insurance Company vs. Parsons, says, "It was decided that in the absence of legislation upon this subject by the Canadian parliament, the legislature of Ontario had authority to impose conditions as being matters of civil right upon the business of fire insurance, which was admitted to be a trade, so long as those conditions only affected provincial trade." Construing this decision with that in the Citizens' case, the undersigned apprehends that legislation affecting interprovincial trade or affecting trade in matters of interprovincial concern would be *ultra vires* of a provincial legislature as being comprehended within the regulation of trade and commerce.

The question, therefore, arises whether legislation can be upheld by which a province professes to take power to prohibit the right of trading within the province, of a company incorporated by the exclusive authority of parliament to trade throughout the Dominion or in two or more of the provinces. Such a company has capacity within the scope of its charter to trade within the provinces and elsewhere in the Dominion just as an individual has. An enactment by a province forbidding residents of or persons doing business in any other province to trade in the first named province would seem to affect more than provincial trade. It would be a matter of interprovincial concern, and, therefore, *ultra vires* as relating to the regulation of trade and commerce; otherwise all interprovincial trade, which the judicial committee holds that the Dominion has the right to regulate, could be rendered impossible by the provinces.

If the right of trading between individuals of different provinces be a matter of interprovincial concern, so also must be the right of trading by a company incor-

porated by parliament for the purpose of trading in different provinces. It is incorporated for the purpose of a trade which is not local or provincial—a trade which concerns at least two provinces; in other words, a trade which the Dominion has exclusive authority to regulate; and hence, though such a company is subject to all the general laws relating to property and civil rights and private and local matters of the respective provinces where it does business, it cannot be bound by provincial legislation directed against it as an extra provincial company in respect of its trade which concerns the whole Dominion or several provinces.

It is the opinion of the undersigned that interprovincial trade or trade that concerns the whole Dominion cannot be prohibited or restricted by a province and, if this be so, it follows that the agencies of such trade established by the Dominion cannot competently by provincial legislation be prevented from executing their powers, or restricted in operations within the scope of their Dominion charters.

It would appear, therefore, that the Act in question is *ultra vires*, and that so far as it has any operation as to Dominion corporations it is likely to interfere with the carrying into effect of the policy of Dominion legislation, unquestionably competent to parliament, with regard to the incorporation of companies intending to do business in Ontario.

It will be observed, moreover, that among the corporations required to take out licenses as a condition to their transaction of business in Ontario are included corporations constituted by Act of the late province of Canada authorized to carry on business in Upper Canada, but not carrying on business there at the date of the commencement of the Act. The undersigned apprehends that there can now be no doubt that the legislature of either of the provinces of Ontario or Quebec has no power to modify or repeal the provisions of the charter of a corporation created by the legislature of the late province of Canada for the purpose of doing business in Upper and Lower Canada. Companies so incorporated have by virtue of their constitutions both the capacity to do business within the scope of their powers, and the right to exercise those powers to the fullest extent within the two provinces, and it is, according to the highest judicial authority, incompetent to either of these legislatures to modify or repeal the provisions of such an Act. Therefore the legislature of Ontario cannot effectively prohibit such a corporation from transacting its business within Ontario, or confine the execution of its powers by conditions or limitations established under the authority of the Lieutenant Governor in Council, or otherwise, as it is sought to do by the present Act.

For the foregoing reasons the undersigned considers that this Act ought not to be allowed to remain as it stands, and he hopes that the provincial government, upon the matter being called to its attention, will promote legislation to amend the Act so as to repeal those provisions which require Dominion corporations and those of old Canada to procure provincial licenses and forbid them from doing business otherwise.

The undersigned, therefore, recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario for the information of his government, with a request that Your Excellency's government be informed as early as convenient as to whether such amendments will be made at the ensuing session of the legislature.

(Approved 8 December, A.D. 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1900.

To His Excellency the Governor in Council:

The undersigned has had under consideration the statutes of the province of Ontario, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State on 18th May, 1900.

Chapter 24, intituled "An Act respecting the licensing of extra provincial corporations," will form the subject of a separate report.

Chapter 13 intituled "An Act to amend the Mines Act," and

Chapter 50, intituled "An Act respecting the fisheries of Ontario," are reserved for further consideration.

As to all the other statutes the undersigned is of opinion that they may be left to their operation without comment, except as to a number of chapters relating to the incorporation or constitution of companies which each contain a provision to the effect that aliens may be shareholders and shall be entitled to vote and eligible for office as directors of the company, as to which attention is called to the observations which have been repeatedly made by the undersigned or his predecessors upon similar clauses, both in the statutes of Ontario and those of other provinces. This objection applies in like manner to the sections in question, but the undersigned does not on that account consider it proper to recommend disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario for the information of his government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor, 28 December, 1900

Copy of an Order in Council, approved by His Honour the Lieutenant Governor in Council on the 28 December, 1900

Upon the recommendation of the Honourable the Attorney General, the Committee of Council advise that a copy of the annexed report, with respect to the petition of W. R. P. Parker, and others, asking that the Act to amend the Mines Act may be disallowed, be transmitted to the Honourable the Secretary of State for submission to His Excellency the Governor General in Council.

Certified,

J. LONSDALE CAPREOL,

Asst. Clerk, Executive Council.

Report of the Attorney General of Ontario

The undersigned has had under consideration the petition of W. R. P. Parker, and others, asking that the Act of the legislature of Ontario, 63 Vic., Ch. 13, entitled: "An Act to amend the Mines Act," may be disallowed pursuant to the authority vested in His Excellency the Governor General in Council by the British North America Act, and begs respectfully to make the following observations with reference thereto.

1. The Act in question was passed by the legislative assembly without any division.
2. The statements purporting to be statements of fact set forth in the petition are not admitted to be true. On the contrary in reply to a question, it was distinctly stated by a member of the government, when the Bill was under discussion, that the object of the Bill was the raising of revenue. The undersigned, however, apprehends that in considering the propriety of the legislation, regard must be had alone to the provisions of the statute against which complaint is made. Its meaning and intention must be gathered from its terms, and it is therefore unnecessary to answer argument set forth in the petition that is based upon alleged statements of fact which are not admitted.

3. The Act complained of is an Act relating exclusively to the management and control of the mineral interests of the province of Ontario. Under the British North America Act the provinces have exclusive power to raise revenue for provincial purposes by means of direct taxation or the imposition of license fees. In some of the provinces mines and minerals constitute probably the most important source from which their revenues are derived, and any interference with the right of the provinces to raise revenue by direct taxation, which is undoubtedly what the Act provides, might result in the most serious consequences.

4. Whether the revenue sought to be raised is obtained in the shape of royalty, license fee or any other form of direct tax is a matter of no importance, and one form of tax may at any time be dropped and another substituted and the amount imposed, whatever the form of the tax, may from time to time be either increased or diminished, or entirely new taxes may be imposed according to the necessities of the revenue or the policy of the legislature.

5. The power to impose a tax or license fee implies the power to reduce or remit such tax or fee, and the taxing authority is the only authority for defining the circumstances under which such reduction or remission may be allowed. If, as I maintain is the case, the legislation is strictly within the competency of the legislature, we are not called upon to defend the provisions of the Act in question. There may be adverse criticism of the policy involved, strong differences of opinion, both in the House and in the country as to the wisdom or prudence of a measure, but if within its jurisdiction each legislature must be supreme in determining whether it is or is not called for in the public interest.

6. The legislature of each province has exclusive legislative jurisdiction in matters relating to the sale of public lands belonging to the province, and this includes the minerals, property and civil rights in the province and generally all matters of a merely local or private nature in the province; and when in addition regard is had to the express authority to raise revenue by taxation either in the form of direct taxation or license fees, and the further well established right of proprietorship over royalties, there seems no room whatever for the contention that the legislature has exceeded its authority in passing the Act in question.

7. Sir Oliver Mowat, late Minister of Justice, when Premier and Attorney General of Ontario, in the course of a correspondence with the federal government upon the question of the disallowance of an Act relating to the Niagara Falls Park, 55 Vic., c. 8, used the following language:—

“I repudiate the notion of the petitioners that it is the office of the Dominion government to sit in judgment on the right and justice of an Act of the Ontario legislature relating to property and civil rights. That is a question for the exclusive judgment of the provincial legislature.”

In another case as far back as 1875 the Honourable Edward Blake, then Minister of Justice, in reporting on a petition for the disallowance of an Act respecting the union of certain Presbyterian churches, 38 Vic., Chap. 75, said:—

“The undersigned does not conceive that he is called upon to express an opinion upon the allegations of the petition as to the injustice alleged to be effected by the Act. This was a matter for the local legislature.”

The late Sir John Thompson, in his report to Council upon the Act, 48 Vic., chap. 5, “An Act in respect of certain sums of money ordered by the legislative assembly to be impounded in the hands of the Speaker,” to which objection had been taken on the ground that it was an interference with the private rights of a creditor, used these words: “Without expressing any opinion as to whether the Act is a just measure or not, the undersigned is of the opinion that it is within the undoubted legislative authority of the legislature of that province, and therefore respectfully recommends that it be left to its operation.”

I also refer to the case of the Nova Scotia Act, 55 Vict., chap. 1, “An Act to amend and consolidate the Act relating to Mines and Minerals.” The contention

was that this Act affected the rights of lessees of mineral lands and changed the terms upon which they were held, numerous petitions against the Act being presented by capitalists who were lessees of coal areas in Nova Scotia. The government, however, declined to interfere upon the ground that the matters dealt with were clearly within the legislative authority of the province.

8. The well-understood rule or principle upon which the federal government acts in relation to disallowance of provincial legislation is that there shall be no interference except in the case of Acts which are illegal or unconstitutional.

9. The Act does not come within the meaning of the words *regulation of trade and commerce* in the 91st section of the B.N.A. Act as interpreted by the courts.

These words *regulation of trade and commerce* include political arrangements in regard to trade requiring the sanction of parliament, regulation of trade in matters of interprovincial concern and possibly general regulation of trade affecting the whole Dominion. Clearly no interpretation should be placed on these words which in its effect would hamper, impair or interfere with the right of the province to raise revenue under the powers given by the Act in that behalf.

In the recent case of *Smylie et al vs. the Queen*, 31 O.R. 202, 27 A.R. 172, it was held that a statute of the province of Ontario (61 Vic., chap. 9) enacting that all sales of pine timber thereafter made and every license thereafter granted should be made or granted subject to the condition that all pine timber cut under such license should be manufactured into sawn timber in Canada, was *intra vires* of the Ontario legislature and was not an interference with the regulation of trade and commerce.

The following extract is from Mr. Justice Osler's judgment in that case:—

"We are dealing with a provincial Act, and we have only to inquire whether the subject with which it is concerned is within the powers of the legislature, and (2nd) whether the language employed is effective for the purpose contended for by the respondent.

"I am unable to agree that the Act is *ultra vires* as infringing upon the powers reserved to parliament by the British North America Act, sec. 91 (2), for the regulation of trade and commerce. The ground on which it is said to do so is that by requiring the timber to be manufactured into sawn lumber in Canada, the Act indirectly prohibits its exportation to foreign countries in any other than its manufactured state.

"Whether this objection would be valid if the Act professed to deal generally with timber which had become the property of private persons or corporations free from any condition on which it had been acquired from the Crown, might admit of argument, but if I am right in my view that the legislature was dealing with the public property of the province and dictating the terms on which it might be acquired, I think that it is not well founded.

"The Act does not in terms purport in any way to regulate trade and commerce, though trade and commerce may be incidentally affected by the business conditions which arise out of its operation just as they may be by provincial legislation affecting property and civil rights in the province, or dealing with other subjects assigned to the exclusive jurisdiction of the provincial legislature, and which, as Lord Herschell expresses it, incidentally involves some fetter on trade and commerce but is not concerned directly therewith for the purpose of regulating it."

10. For the foregoing reasons the undersigned submits with confidence that the Act should be left to its operation.

J. M. GIBSON,
Attorney General.

20th December, 1900.

The Premier of Ontario, to the Minister of Justice

OFFICE OF THE PREMIER OF ONTARIO, TORONTO, 8th February, 1901.

MY DEAR SIR,—I inclose you herewith the statement you were good enough to give me some time ago respecting the proposed order regarding our Act of last session with respect to extra-provincial corporations. I also send you a memo, which has been prepared in answer to some of the objections you have taken to the validity of our Act.

Yours truly,

G. W. ROSS.

*Re Extra-Provincial Corporations Act**MEMORANDUM upon the letter and memorandum of the Minister of Justice.*

1. It does not seem necessary to comment upon the general observations contained in the letter of the Minister of Justice in so far as they deal with the general questions arising under the British North America Act, to which the letter has reference, as the general correctness of the views of the Minister of Justice in this respect may be acquiesced in. It is with reference to the intention and effect of the Ontario legislation respecting extra-provincial corporations that it is necessary to deal. In this respect the undersigned ventures to think that the Minister of Justice in his letter has misapprehended the intention and effect of the provincial Act and its scope. The memorandum inclosed in his letter does not seem to go as far as the letter itself, and, taking the two together, it seems to the undersigned that the objections to the legislation are not serious, and that, properly understood, the intentions of the Act in question, and the views of the Minister of Justice with respect to the kind of legislation which might properly be left to its operation, so far as regards the power of disallowance, are not far apart, and that a slight amendment for the purpose of removing doubts is all that is required.

2. A very clear distinction is made in the Act between the position of companies incorporated by or under the authority of an Act of the Dominion of Canada or of the legislature of the late province of Canada, and the position of a company incorporated in a foreign country, or under an Act of the parliament of Great Britain, which does not assume to extend to Canada, and which for this purpose may properly be treated as if passed in a foreign country. By section 4 a corporation incorporated under an Act of the Dominion and authorized to carry on business in Ontario and a corporation incorporated under an Act of the late province of Canada, are entitled as of right, upon complying with the provisions of the Act and the regulations made under it, to receive a license to carry on their business and exercise their powers in Ontario. It is suggested in the memorandum of the minister that under section 7, limitations and conditions might be included in the license to a Dominion company which would modify the right conferred by section 4 to receive a license to carry on its business and exercise its powers in Ontario, meaning of course the whole of its business and the whole of its powers. This certainly was not the intention of the framer of the Act, and the undersigned ventures to think that, under a proper reading of sections 4, 5 and 7 taken together, that which is feared by the Minister of Justice could not properly be done. Section 4 is unqualified in its terms. Section 5 contains the words "subject, however, to such limitations and conditions as may be specified" in the license. The same words occur at the end of section 7, but, as section 7 covers the three cases which are included in sections 4 and 5, a fair reading of section 7 would in the opinion of the undersigned confine the right to impose limitations and conditions to the class mentioned in section 5, giving in this way full effect to the unqualified terms of section 4. However this may be, the undersigned recommends that for the removal of doubts the following proviso be added to section 7, viz.:

"Provided always that no limitations or conditions shall be included in any such license which would limit the rights of a corporation coming within sections 7 or 8 to carry on in Ontario all such parts of its business and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized or have capacity to carry on and exercise therein." This proviso would in the opinion of the undersigned remove the objections pointed out by the Minister of Justice.

3. The regulations which under the Act the Lieutenant Governor in Council is empowered to make are confined to matters of procedure, and the right under section 13 to suspend or revoke a license to a Dominion company would be confined to a case of default in making returns or in continuing the appointment of a representative in Ontario on whom process could be served.

4. The undersigned begs to refer to the legislation in other provinces of Canada respecting extra-provincial companies and the taxation thereof, notably that in British Columbia. The undersigned also refers to the Act of the legislature of Prince Edward Island with respect to the carrying on of business in that island through the medium of commercial travellers and companies elsewhere. The undersigned also refers to the provisions of the Act of the province of Quebec with respect to the licensing and taxation of companies not incorporated in the province and to the decision of the Judicial Committee of the Privy Council with reference thereto. The undersigned is aware that in matters of this kind new questions are constantly being raised, and it is not difficult to suggest arguments for and against the constitutionality of provincial and Dominion legislation with respect to such matters. The question in hand, however, is not to be decided upon strict legal principles of detail construction; all such questions should be and must be left for the decision of the courts. The question in hand is whether the exercise of the powers of disallowance is under all the circumstances called for, and the undersigned ventures to express his very strong view that, having regard to the provisions of other statutes, both in the province of Ontario and in other provinces, which have been allowed to have their operation, the power of disallowance cannot constitutionally and properly be exercised on this occasion.

5. The conclusion of the memorandum of the Minister of Justice expresses the hope that the provincial government will promote legislation to amend the Act so as to repeal those provisions which require Dominion corporations and those of old Canada to procure provincial licenses and forbid them from doing business otherwise. The undersigned hopes that the amendment to section 7 which he has suggested will be regarded as satisfactory by the Minister of Justice. In the opinion of the undersigned it would not be proper to repeal entirely the provisions requiring Dominion corporations and those of old Canada to procure provincial licenses. The power conferred upon the provincial legislatures under section 92 of the British North America Act with respect to licenses and with respect to taxation clearly includes the power to require a Dominion company to take out a license and to pay a tax as well as foreign companies. The provisions of the Act prohibiting such companies from doing business in Ontario without a license and without the payment of a tax are, in the opinion of the undersigned, proper provisions and required for the proper enforcement of the licensing and taxing provisions. These provisions will not bear oppressively upon any company, and the widest discretion is given to the executive of the province to relieve from penalties and to prevent informers or others from proceeding for their recovery. This discretion has up to the present been exercised in the most liberal manner, and in no case has any proceeding been threatened or taken where a company shows a desire to comply with the provisions of the statute.

6. From the foregoing the undersigned hopes the Minister of Justice will see that the statement in his letter that the Act was intended to hamper the Dominion government and parliament in dealing with matters relating to trade and commerce, etc., and to hamper them with respect to corporations which are desirous of doing business in two or more provinces, is not warranted by the facts.

The Premier of Ontario to the Minister of Justice

OFFICE OF THE PREMIER OF ONTARIO, TORONTO, 22nd February, 1901.

MY DEAR SIR,—I enclose you a copy of the Bill to amend the Act respecting extra-provincial corporations to bring it within the limits of our jurisdiction as a province. Will you kindly look it over and see if it meets with your views, and return it at your earliest convenience?

Yours truly,

G. W. ROSS.

BILL

[1901

An Act to amend Chapter 24 of the Statutes for A.D. 1900, intituled: 'An Act respecting the Licensing of Extra-Provincial Corporations.'

His Majesty, by and with the advice and consent of the legislative assembly of the province of Ontario, enacts as follows:—

1. Section 2 of Ch. 24 of the statutes of Ontario for the year 1900 is hereby amended by adding to Class V, therein, the words 'or by Ch. 31 of said statutes for 1899, intituled: 'An Act respecting Brewers' and Distillers' and other licenses.'

The amendment made by this section shall take effect as if it originally formed part of said Chap. V.

2. Section 6 of the said Act is hereby amended by striking out of the third line of the first proviso thereof of the word 'and' and substituting therefor the word 'or.'

3. Section 7 of the said Act is hereby amended by adding thereto the following, viz.:—'Provided always that no limitations or conditions shall be included in any such license which would limit the rights of a corporation coming within Class VII. or VIII., to carry on in Ontario all such parts of its business, and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized to carry on and exercise therein.'

From the Minister of Justice to the Premier of Ontario

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1901.

MY DEAR SIR,—Referring to your letter of 2nd instant, I have considered your memorandum with respect to the Extra-Provincial Corporations Act; also the proposed amendment, which is satisfactory so far as it goes, but I do not consider that a provincial legislature ought so to legislate as to require the payment of a license fee, as a condition, to a Dominion corporation doing business within the province, or to exact license fees discriminating between trading corporations established by parliament and those established by the provincial legislature. I think the Act ought to be further amended so as either to exempt corporations created by parliament and those of old Canada from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fee required under the Act shall be imposed equally upon corporations created by the Dominion, by the old province of Canada and by the legislature of Ontario.

I sincerely hope that you will be able to recommend the further amendment herein suggested.

Yours, etc.,

DAVID MILLS,

Minister of Justice.

The Premier of Ontario to the Minister of Justice

OFFICE OF THE PREMIER OF ONTARIO, TORONTO, 18th March, 1901.

MY DEAR SIR,—I notice by your letter of the 14th inst., that you still object to the Extra-Provincial Corporations' Act on the ground that we impose a license fee on corporations holding a charter of the Dominion parliament or from the old parliament of Canada. As you do not say that you propose disallowing our Act of last session on account of this provision, the Provincial Secretary will introduce an amended Bill with the clauses eliminated which have been considered as *ultra vires*. Should you still contend that the power to impose a license fee on corporations holding a Dominion charter or a charter of the old parliament of Canada is beyond our jurisdiction, we will be prepared to submit a case and argue this right, as the law provides. I mention this so that you may feel that we are treating your views with the greatest courtesy and at the same time maintaining what we think are our constitutional rights.

Yours truly,

G. W. ROSS.

The Minister of Justice to the Premier of Ontario

DEPARTMENT OF JUSTICE, OTTAWA, 19th March, 1901.

MY DEAR SIR,—I have your letter of the 18th inst., with reference to extra-provincial corporations. I think that you have overlooked some of the objections to that Bill. What we contend is that the regulation of trade and commerce is with us, and that you undertake to treat the Dominion corporations which we have the right to create, for the purpose of trade, in a way different from that in which you treat the corporations called into existence by your own authority. The question is not, whether you have the power to tax Dominion corporations more than you do those of the local legislature, created for a similar purpose, but whether we ought to permit the policy of the Dominion to be frustrated by unjust provincial legislation. You have only to make the tax sufficiently discriminating, in order to force Dominion corporations out of existence altogether, and I do not think we ought to permit you to interfere with our policy in a matter within our jurisdiction by such a use of your power of taxation. It may be that you have the power to impose ten times the tax upon "A" that you do upon "B" for the same kind of property, and for the same purpose, but when you extend that power to us, with the view of frustrating our public policy, I think we ought to use the constitutional power which we possess to prevent it. As long as you impose no greater tax upon Dominion corporations than you do upon similar corporations created by yourselves, I am not disposed to recommend interference. It is where you undertake to discriminate, and to apply the doctrine of protection against our corporations that I object. The government of Canada is not a foreign government; the corporations that it creates are not foreign corporations; they are as much at home in the province of Ontario as are those called into existence by the local legislature, and violent hands ought not to be laid upon them. If this is done, it is our duty to protect them, and we think there is but one mode of harmonious living, and that is by treating all alike, whether their charters are Dominion or provincial. As we have the power of taxation in any form whatever, we can discriminate in favour of Dominion corporations in Ontario, as easily as you can discriminate against them. If we were to do so, you would at once cry out against our legislation, not because it was *ultra vires*, but because it would be unjust. We simply ask you to recognize the principle of equality. What have you to say against it? What reason can you assign for imposing a higher tax upon a Dominion corporation than upon one created by your own legislature? We have

not proposed to impose a discriminating tax upon your corporations, but we have undoubtedly the power. In my opinion, all legislation, on the part of a province, of this kind, ought to be disallowed if persisted in. I think you will see what my position is. The question of *ultra vires* in this matter is quite subordinate to the general question of public policy.

Yours, etc.,

D. MILLS,

Minister of Justice.

MEMORANDUM as to Disallowance of 63 Vic. (Ont.), Chap. 13, whereby certain License Fees on the Business of Mining are Imposed or Authorized.

Submitted by J. M. Clark, Esq., K.C.

FAITH SHOULD BE KEPT

To show that the imposition of the license fees authorized by the said Act would be a breach of faith towards all those who have acquired mining lands in the province of Ontario under letters patent issued prior to the 4th day of May, 1891, all that is necessary is to quote the declarations of the province made by Her late Majesty by and with the advice and consent of the provincial legislature.

By the Mines Act of 1892, 55 Vic., chap. 9, it was declared that:

"All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been reserved, imposed or made payable upon or in respect of any ores or minerals extracted from the lands granted by such patents and lying within this province are hereby repealed and abandoned, and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty."

The said declaration was embodied in the Revised Statutes of Ontario, 1898, chap. 36, in the following words, referring to all lands granted by patents issued prior to the 4th day of May, 1891, that "such lands, ores and minerals shall be free and exempt from every such royalty tax or duty." Similar declarations have since confederation been repeatedly made. See, for instance, 32 Vic., chap 34, sec. 3.

In the first reading of the present Act the word "tax" was used, but subsequently the phrase "license fee" was substituted. But inasmuch as a license fee is a tax and moreover just such a royalty tax or duty as was covered by the legislative declaration, that such lands, ores and minerals "shall be free and exempt from every such royalty, tax or duty," such a transparent disguise does not alter the fact that the Act now complained of is a gross breach of faith to all who hold lands affected patented prior to 4th May, 1891.

This was the ground for the disallowance of the Act of British Columbia, 37 Vic., No. 1 (see Dominion and provincial legislation, 1867 to 1895, at pp. 1024 to 1028). At page 1028 the ground for the disallowance is shown to be the honour and good faith of the Crown. The precedent so established should, it is respectfully submitted, be followed in the present case.

ACT IS CONFISCATION

The license fees authorized to be imposed by the said Act complained of are as follows:—

"(a) For ores of nickel, \$10 per ton, or \$60 per ton if partly treated or reduced;

"(b) For ores of copper and nickel combined, \$7 per ton, or \$50 per ton if partly treated or reduced."

These amounts exceed the value of the ores or matte so taxed, so that what is authorized is plainly confiscation without compensation, and moreover the lands so to be confiscated were granted under the great seal of the province of Ontario unconditionally in fee simple.

This follows from common knowledge of the value of such ores, but is conclusively shown by the official reports issued by the province of Ontario. The report of the Bureau of Mines, published in 1899 for the year 1898, states that 120,924 tons of nickel and copper ore were smelted, producing 21,101 tons of matte valued at \$782,300.

The above tax of 21,101 tons of matte would amount to \$1,055,050, being in excess of the total value of the product by \$272,700.

Further, according to the same report the amount paid out in wages alone was \$315,501, which means that the amount of duty and wages would exceed the value of the product for that year by \$588,201.

For the year included in the report of 1900 (at page 18) it is stated that the total quantity of the ore smelted in that year was 171,230 tons, yielding 19,215 tons of matte of a total value of \$702,440. The duty on 19,215 tons of matte at \$50 per ton would be \$960,750, the duty thus being greater than the total value or product in that year by \$258,310.

Further, the report shows that the wages paid in that year amounted to \$443,879, so that the duty and wages for that year would, if the Act were enforced, amount to \$702,189 more than the total value of the product.

It is further to be pointed out that these license fees are declared to be a charge upon the land and that if the same are not paid power is given to the Attorney General of the province to foreclose the estate and right of all persons claiming any interest in the property from which the ores to be taxed are mined or won. It is pointed out that this confiscation is not for the purpose of producing provincial revenue or for the purpose of dealing with property and civil rights within the province, but for the purpose of attempting to regulate trade and commerce, a matter committed to the exclusive jurisdiction of the Dominion parliament.

The present Act is therefore an attempt to do indirectly what would be wholly beyond the power of the province to do directly.

In view of the mischievous consequences which will flow from such trenching upon federal authority, the present is pre-eminently a case in which the power of disallowance, which involves a corresponding duty, should be exercised.

To quote the language used in a report confirmed by the Governor General in Council in reference to a previous unsuccessful attempt to encroach upon federal jurisdiction, the Act now complained of is "objectionable in principle and calculated to produce a feeling of insecurity abroad with reference to provincial legislation."

VESTED INTERESTS THREATENED

It follows from the above that the vested interests of all who had acquired lands patented prior to 4th May, 1891, are threatened by this legislation, and if the present Act is not disallowed, the security of all Canadian investments under provincial control, and particularly of all Canadian mining investments will be sensibly diminished.

In provincial and Dominion legislation, 1867-1895, p. 1048, the section of the British Columbia statute there referred to is said to be objectionable "because it may be an interference with the vested rights of individuals without providing any compensation therefor."

TRENCHES ON DOMINION JURISDICTION

That the object and intention of the Act complained of is not to deal with any matter over which the province has jurisdiction, but indirectly to attempt to regulate trade and commerce has been clearly shown. This was the object stated in reference

to the Act both at the time of its introduction and of its being assented to, and the same conclusion results inevitably from a consideration of the circumstances under which the Act was introduced. In fact it is obvious that under the guise of dealing with license fees and property and civil rights, the purpose and object of the enactment is to deal with matters entrusted to the exclusive jurisdiction of the Dominion parliament, and as has been laid down in the courts, however carefully such object or purpose is veiled, the foresight of those who framed our constitution has led them to provide a remedy in the 90th section of the British North America Act, by vesting the power of disallowance in the executive power of the Dominion, the Governor General in Council.

The remarks made by the Hon. Edward Blake, as Minister of Justice, in his report of 11th October, 1876, quoted in provincial legislation, 1867 to 1895, at page 1043, are fully applicable to the present case. In that report which was confirmed by the Governor General in Council it is said that "the unequal and discriminatory character of these taxes and their injurious effect in the regulation of trade and commerce are very obvious." After calling attention to the express provisions of the British North America Act, vesting exclusively in Canada the regulation of trade and commerce, the Minister of Justice said:

"It is to be observed that that Act (the British North America Act) vests in that parliament (the parliament of Canada) the legislation on duties, customs and excise and the funds produced thereby. It was also provided that all articles of the growth, produce or manufacture of any one province shall from and after the union be admitted free as to each of the other provinces."

The local Act now under consideration appears to the undersigned by reason of its peculiar provisions both as to the claims of persons and the description of trade subject to taxation, to involve an attempt to regulate trade and commerce in excess of the powers of a local legislature, opposed to the spirit of the Union Act, in violation of sound principles of taxation, and of mischievous tendency."

That report was adopted by Order in Council and the Act there in question disallowed.

The reasons for disallowance are much stronger in the present case, and it is respectfully submitted that a similar course should now be pursued.

NOT A BONA FIDE EXERCISE OF PROVINCIAL JURISDICTION

From the above it follows that the present Act is not a bona fide exercise of provincial jurisdiction, and in the report of the Minister of Justice, dated 22nd December, 1875, confirmed by Order in Council of 29th February, 1876, in discussing the principles upon which the power of disallowance should be exercised, it is said, "there may be a provincial jurisdiction for a particular purpose, exercised in fact, though not in form, for the accomplishment of another purpose within Canadian jurisdiction."

See Dominion and provincial legislation, 1867-1895, p. 71.

A similar principle is pointed out by the present Chief Justice of Canada at 2 S.C.R., at p. 109, in the following words:—

"However carefully the purpose or object of such an enactment might be veiled, the foresight of those who framed our constitution has led them to provide a remedy in the 90th section of the Act by vesting the power of disallowance of provincial Acts in the executive power of the Dominion, the Governor General in Council."

LICENSE FEES IN REALITY AN EXPORT DUTY

This appears clearly from the provisions of section 10 and the last part of section 13, subsection 1, and attention is called to the last words of section 10 referring to the said license fees upon ores which are smelted or otherwise treated within the Dominion of Canada, &c., that they or such proportion thereof as may be fixed by the

Lieutenant Governor in Council "shall be remitted, or if collected shall be refunded under such regulation as the Lieutenant Governor in Council may prescribe."

The confusion which would be created in the present case is shown by the fact that the Dominion parliament have already covered the same field by federal legislation in the Dominion Act, 60-61 Vic., Ch. 17, assented to 29th June, 1897. If therefore the present Act is not disallowed there will be a delegation by the Dominion parliament to the Governor General in Council and a delegation to the Lieutenant Governor of the province of Ontario in Council to deal with precisely the same object. This is objectionable and it is submitted that the appropriate remedy is disallowance.

LEGISLATION BY ORDER IN COUNCIL AN EVASION OF THE BRITISH NORTH AMERICA ACT

The present Act virtually delegates the power of taxation and confiscation of mining lands, and regulation of the smelting and refining industries so far as nickel and nickel copper ores are concerned, by order of the Lieutenant Governor of Ontario in Council, and under the constitution such Orders in Council are not subject to revision by the Dominion government.

This is an evasion of the constitutional safeguard afforded by disallowance and was made the ground for the disallowance of a British Columbia Act by the Dominion government, as appears by the report of the Minister of Justice, dated 13th October, 1875. That report at page 1038 of Dominion and provincial legislation, 1867-1895, says: "So long as the local legislature keeps within its own hands the division of the districts and the alteration of their boundaries, this government has by virtue of the power of disallowance some measure of control over such action, but should such Act go into operation no such control could hereafter be exercised here," that is, by the Dominion government. The Act there in question was disallowed, the said report being adopted by Order in Council. The reasons for disallowance are much stronger in the present case, because the Act there in question dealt only with municipal boundaries, whereas the present Act deals with much more important matters.

It is to be added that such a delegation of legislative power, especially upon the subject of taxation is completely repugnant to the spirit of our Canadian constitution, and if in practice such a delegation is sanctioned, the power of disallowance may be wholly evaded.

SAW-LOG CASE NOT IN POINT

It has been urged that the present case is similar to what is known as the Saw-log Case, but it is to be observed that there is no foundation in fact for this argument. There the province was dealing with its own property. In the present case the province had parted in the most absolute way, as above shown, with all proprietary control over the lands and ores now in question. This is made clear by the quotation from the judgment of Mr. Justice Moss, one of the judges of the Ontario Court of Appeal. He says (27 Ontario Appeal Reports, 192): "I see no reason for thinking that the legislature may not in respect of this property do what any subject proprietor might do when proposing to dispose of his property."

The basis, therefore, of that decision was that the property there being dealt with was the property of the province but this is an entirely different matter, the property has been granted unconditionally by the province and has in many cases passed into the hands of persons not resident in Ontario. This matter as discussed in the *Toronto Globe* of 11th April, 1900, where the well recognized principle was stated in the following words:—

"Had the minerals and mining lands been alienated unconditionally, the province could not now impose necessary obligations and taxes, for the mine owners would be in a position to claim immunity or compensation."

The mine owners who hold lands patented prior to 4th May, 1891, do hold lands which had been patented unconditionally, and they are therefore in a position to

claim immunity or compensation, and under the precedents the proper authority to grant such immunity is the Governor General in Council in whom is vested the power of disallowance.

DOMINION AND IMPERIAL INTERESTS PREJUDICED

It is plain that if legislation such as the present is permitted, a precedent will be established for mischievous provincial legislation by Order in Council, over which the Dominion government will cease to have control, but for which they will be responsible. The result will be that Dominion and Imperial interests may be greatly prejudiced.

The reasons for entrusting exclusive jurisdiction over such matters as the regulation of trade and commerce were well considered. If the present Act is not disallowed, the efficiency of this necessary federal control will be seriously impaired.

The present Act, if not disallowed within the time limited therefor, will enable the Ontario government for the time being to frustrate, so far as nickel and copper ores are concerned, the policy of the Canadian government which has for its object the development of trade with Great Britain.

It authorizes discrimination against British industry and enterprise, and tends to compel British consumers of nickel to look to foreign sources for supplies of nickel.

In fact since the passing of the present Act the nickel mining industries of New Caledonia, Norway and other foreign countries have been greatly developed at the expense of Canada.

PRECEDENTS JUSTIFY DISALLOWANCE

The precedents above referred to and others too familiar to render citation necessary, fully justify the exercise of the power of disallowance in the present case.

The action taken by the Dominion government with reference to the Quebec Mining Law, 54 Vic., Ch. 15, is also relied on.

See Dominion and provincial legislation, 1867-1895, p. 440. Section 1426, of the Act there complained of, imposed on all mineral properties, a tax therein styled a royalty "of three per cent of the merchantable value of the product of all mines and minerals."

As already shown, the reasons there alleged, namely, that the royalty was made applicable to lands which had been alienated unconditionally by the province exist in the present case.

And whereas in the Quebec case only three per cent was imposed, in the present case over one hundred per cent is authorized.

NO PRESENT REMEDY IN COURTS

This is not a case in which there is purely a legal question of *ultra* or *intra vires*, and in any event inasmuch as the Ontario government and legislature have formally declared that it is not in the public interest that the legislation in question should be enforced, it follows that there is no present remedy in the courts. On the other hand the Act creates a cloud upon the nickel industry and virtually a blanket charge or mortgage upon all nickel properties that may be worked, which should be removed.

The only available method of such removal is by the exercise of the power of disallowance.

The injury caused not only to private individuals but also to the trade and commerce of the Dominion by the present Act has already been very great and will in the near future be much greater.

The presence of the Act upon the statute-book will be a tremendous blow to the credit of Canada, and is very detrimental to the further investment of capital in Canadian enterprises.

The Act complained of is contrary to natural justice and equity which the Governor General in Council is entrusted with authority to disallow. To this authority as pointed out by Chief Justice Draper *re* Goodhue, 19 Gr. 384, a corresponding duty attaches.

On these grounds, namely:

1. That faith should be kept and the honour of the Crown maintained.
2. That the Act complained of amounts to virtual confiscation without compensation.
3. That vested interests are threatened.
4. That the Act complained of trenches upon Dominion jurisdiction.
5. That it is not a bona fide exercise of provincial jurisdiction.
6. That the license fees authorized are in reality export duties.
7. That legislation by Order in Council as proposed is an evasion of the British North America Act.
8. That the saw-log case is not in point.
9. That Dominion and Imperial interests are prejudiced.
10. That the precedents justify disallowance; and
11. That there is no present remedy in the courts.

It is respectfully submitted that the Act complained of should be disallowed.

Toronto, March, 1901.

MEMORANDUM for the Minister of Justice of reasons for the disallowance by the Governor General in Council of the Act to amend the Mines Act, being 63 Vict., Cap 13, of the Ontario Statutes of 1900.

1. Dr. Ludwig Mond, F.R.S., of London, England, acquired by the investment of considerable amounts of money, several nickel properties in the province of Ontario, acquiring title in fee simple, under absolute grants from the Crown in right of the province of Ontario. The titles to these properties were acquired before the legislation complained of was introduced.

Certain royalties were by the legislation of 1891 imposed on certain lands in the province of Ontario, but by the Mines Act, 1892, being 55 Vic., Chap. 9, there was a declaration by Her Majesty made by and with the advice and consent of the Ontario legislature, as follows:—

“All royalties, taxes or duties which by any patent or patents issued prior to the 4th day of May, 1891, have been reserved, imposed or made payable upon or in respect of any ore or minerals extracted from the lands granted by such patents and lying within this province are hereby repealed and abandoned, and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty.”

This declaration was contained in the R.S.O., 1897, cap. 36, at the time the said properties were acquired. On the faith of these rights and of the said declaration, considerable amounts of money were expended.

2. The said Act purports to create what is substantially a blanket charge upon all the said lands so acquired in good faith, for more than the value of the produce of the said lands, and it appears by the said Act that the right is reserved to make the said charge operative, and to permit the attempt to enforce the same by the Attorney General of the province of Ontario. The sections, namely, sections 4 to 12 of the Act complained of, have not yet been brought into force, and at the present session of the Ontario legislature a member of the government declared officially in the legislature that the government did not consider it in the public interests to enforce the provisions of the said Act.

3. It is strongly urged, therefore, that the incalculable injury wrought by the provisions of the said legislation is nevertheless continued by the appearance of the

said provisions upon the statute book, creating a cloud upon the nickel mining industry of such a nature that it is impossible to secure the investment therein of English capital.

4. The provisions of the said Act, as is indicated on the face of it, and as appears directly from the official statements which are of record in your department as to the object of the legislation in question, show that the Act complained of is an attempt to trench upon the authority of the federal parliament. That this is the case appears more clearly from the fact that the field covered by the present legislation was already covered by the Dominion Act of 1897, authorizing the Governor General in Council to impose certain export duties.

5. The following among other reasons, clearly indicate that such is the object of the legislation:—

(a) The license fees or taxes authorized are so excessive as to be absolutely prohibitory. This is shown conclusively by the official reports of the Ontario Bureau of Mines. In the official report for 1899, it appears that the value of the 21,101 tons of nickel and copper matte produced in the province of Ontario was \$782,300. The tax on this authorized by the Act is \$50 per ton, which would amount to \$1,055,050, being in excess of the total value of the produce by \$277,700. The report shows that in the production of this matte there was expended in Ontario for wages alone \$315,501.

Similarly for the year 1900, according to the report of the Bureau of Mines, the total quantity of ore smelted was 171,230 tons, yielding 19,215 tons of matte, of the total value of \$702,440. The duty or license fee on the 19,215 tons, at \$50 a ton, would be \$960,750, being in excess of the total value of the produce by \$258,310, and it may be pointed out that the wages alone expended in this year in producing this matte amounted to \$443,879.

(b) The Act deals with smelting or otherwise treating ores or minerals "in the Dominion of Canada." That is to say, the province of Ontario undertakes to legislate in regard to the business of refining and smelting in the Dominion of Canada, not merely in the province of Ontario. The mischievous character of such legislation is apparent when it is borne in mind that great industries may be established, for instance, at Sydney, C.B., and if the present Act is not disallowed, then the Dominion government will be virtually sanctioning the delegation to the Lieutenant Governor of Ontario in Council the jurisdiction to make such regulations as the Lieutenant Governor in Council may prescribe in regard to industries wholly outside of the province of Ontario, and to enforce such legislation by confiscation of the lands in the province of Ontario from which the ores or minerals so treated are derived.

It is to be observed that the legislature are not dealing with ores or minerals which belong to the province of Ontario, but also with ores and minerals in which the province of Ontario had divested itself of all proprietary interest.

(c) It further appears that by these objectionable sections the Ontario legislature seeks to vest in the Lieutenant Governor of the province in council the right to deal with Imperial interests as appear in section 13 of the Act complained of. That section refers to the conditions upon which the license fees may be remitted "in respect of ores or minerals refined in the United Kingdom or in any British colony or dependency." It is submitted that such legislation should be disallowed.

6. While it may be contended that the Dominion government would not intervene to prevent the confiscation of property of British subjects by provincial legislatures, yet it is submitted that it should not sanction the use by the province of the power of confiscation for the purpose of interfering with questions of trade and commerce and regulating the smelting and refining industries.

7. It is also submitted that this is a case in which the parties injuriously affected should not be left to their remedy in the courts when in the future the provincial government for the time being seek to enforce the legislation. It is quite true that

as to matters within its competence and within its jurisdiction, the legislation of the province has the operation and force of sovereign legislation, and in the courts every presumption is made in favour of the validity of such legislation, and that all the courts can judge of is the power to make the law, for, as pointed out by the late Chief Justice of the Supreme Court, with its expediency, its justice or injustice, its policy or impolicy, the courts have nothing whatever to do, but these are matters to be considered in discussing the power of disallowance.

In the Attorney General of Canada vs. The Attorney General of Ontario, 20 O.R. 245, the learned chancellor points out that the right of supervision touching provincial legislation entrusted to the Dominion government, works in the plane of political expediency as well as in that of jural capacity.

8. That the power of disallowance was designed to meet such a case as the present is very clear. In a very able judgment the present Chief Justice of Canada, then Strong, J., said, 2 S.C.R., at pp. 108-109, "However carefully the purpose or subject of such an enactment might be veiled, the foresight of those who framed our constitutional Act led them to provide a remedy in the 90th section of the Act, by vesting the power of disallowance in the executive power of the Dominion, the Governor General in Council."

9. Another most important consideration, which is pressed strongly upon your consideration, is that unless the power of disallowance is exercised before 18th May, 1901, the power of supervision upon this most important subject by the Dominion government will be wholly gone. After the said 18th day of May there will be no right in the Governor General in Council to supervise or disallow any Order in Council that may be passed from time to time by the provincial government. The Dominion government would be taken to have sanctioned anything that can be done under the authority of the legislation complained of, and inasmuch as the license fees upon ore and matte, as above shown, largely exceed the total value of the ore, practically absolute power would, so far as the Dominion government is concerned, be granted to the Ontario government.

10. It should be pointed out that it is much clearer now than it was at the time this legislation was passed, that the sections complained of are against the best interests of Canada. The legislation has already greatly benefited New Caledonia, Norway and other foreign countries at the expense of Ontario.

11. It is to be observed that the Act as introduced into the Ontario legislature, and read a first time, said nothing whatever about license fees, but purported to be an Act to impose taxes. This was abandoned, and the name was changed to license fees, but it is submitted that this change of name does not alter the substance of the Act, and that it is not in substance a license Act at all, but nothing more or less than an attempt to regulate trade and commerce, and to impose an export duty. This is the whole pith and substance of the sections, as was clearly admitted by the minister in charge of the Act when introducing the same into the Ontario legislature.

On these grounds, as well as on those previously presented, it is submitted that the power of disallowance should in the present instance be exercised.

J. M. CLARK,

Counsel for Dr. Ludwig Mond.

The Minister of Justice to the Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 25th April, 1921.

MY DEAR SIR,—I received your letter this morning, and I have the honour to transmit, in reply thereto, the inclosed copy of a report which I submitted to Council, and which has been before it for the past fortnight.

As your legislature would not meet in time to have the legislation amended, I did not see any other course open than that of disallowance.

I hope that your government will be able to give an early reply to this communication. I am sending it to you in an irregular way. You no doubt will bring it before your Attorney General for his report, and I shall be pleased to receive any observations which you and he may make upon the subject. If you had at once brought your Act into operation, my inclination would have been to contest the provisions in the courts, but the time for disallowance will be gone before anything can be done.

Yours, etc.,

DAVID MILLS,

Minister of Justice.

The Premier of Ontario to the Minister of Justice.

TREASURY DEPARTMENT, ONTARIO, TORONTO, 27th April, 1901.

MY DEAR SIR,—I am greatly surprised at the contents of your letter of the 25th inst. On 20th December, a report was transmitted to your department by the Attorney General setting forth the grounds on which the government considered the Mines Act was within the jurisdiction of the legislature. Not having received any reply to this report, I concluded that you were convinced of the soundness of the position which the government had taken, and therefore the whole question was dismissed as practically settled. Had you still insisted upon your own views, as you had a perfect right to do, I could, while the legislature was in session, have met your objections by such modifications of the Act as would have been necessary, should such a course be deemed in the interests of the province and in accordance with the opinions of my government respecting its own right in the matter. Now after the legislature has been prorogued, and without any opportunity to meet your views, even were it practicable to do so, I am advised that you propose a disallowance of a certain portion of the Act in question.

Your course in this respect is the more difficult to understand because, with respect to other Acts to which you took exception, viz., the Fisheries Act and the Act respecting Extra-Provincial Corporations, the government acquiesced in all the amendments you suggested and which we considered might be made without derogating from our jurisdiction, in order to avoid unnecessary controversy between the two governments. Had you in this case treated my government with the same consideration, this correspondence would be unnecessary. Should you act upon the apparent intention of your letter, just received, we will be in the humiliating position—

1. Of having transmitted a despatch on a matter of supreme importance to the province of which no notice was taken and to which there was no reply, and
2. Of having an Act of the legislature disallowed without having been afforded an opportunity of amending the same, did we think proper so to do.

But apart from these considerations, which are of minor importance, with due deference to your views, I must still be permitted to say that the argument of the Attorney General in our despatch of 20th December last has not been answered. As the Attorney General has shown, the Mines Act is not an Act for the imposition of taxes in the nature of export duty, but on the contrary an Act imposing certain charges by way of license upon the property of the Crown on condition that that property shall be disposed of in a certain manner—the Crown in this case being the provincial government, not the Dominion government. Surely you do not propose to abridge the right of the Crown by license to dispose of its own property? If so, why did you not disallow the Act requiring pine logs to be manufactured into lumber in Canada? The principle was precisely the same. Moreover, as you are doubtless aware, the Court of Appeal was unanimous in sustaining the contention of the province in respect to this Act, as was pointed out in the despatch of the Attorney General already referred to.

Nor need I cite the legislation of the province of Quebec with respect to the manufacture of pulp, by which it is provided that a fee or royalty of \$1.90 per cord will be chargeable upon pulp wood, with a rebate of \$1.50 if manufactured into pulp in the province. By section 7 of the Mines Act (1900) a license of \$10 per ton may be imposed upon nickel ore, and by section 10 this may be remitted in whole or in part when nickel is found to be treated in the Dominion so as to yield "fine metal." It appears to me that the analogy between the legislation as to pulp in Quebec and nickel in Ontario is complete. Then why should the Department of Justice pursue a different course with respect to the legislation of the two provinces?

But it is needless to repeat the argument so fully set forth in the despatch of the Attorney General of 20th December. Permit me to suggest a *modus vivendi*, viz., let the Mines Act stand as was done with the Act respecting the manufacture of pine logs, and let the parties who claim to have a grievance contest its validity in the courts. This appears to me to be the only proper course to pursue at the present juncture. We have now no farther opportunity for argument, nor, as already stated, have we an opportunity to consult the legislature as to possible amendments. You have allowed nearly four months to pass without any intimation that you had not accepted our answer to your objections. My government will feel aggrieved, and I think very justly, if the door is closed thus suddenly against a farther hearing of the case. Disallowance may mean untold disturbance in the mining industries, at present so prosperous. Capital is daily seeking investment; \$200,000 have been invested in fresh developments at Sudbury; Dr. Mond, notwithstanding what he says through his attorney, has invested nearly \$800,000 at Victoria; Mr. Clergue, at the Sault, is erecting a large steel plant with a view to use nickel ore in conjunction with iron in certain new processes of manufacture. We have projected railroads into the nickel districts in which at least ten millions of capital will be invested. The Hamilton works are engaged in investigation as to the refining of nickel and are investing large sums of money in a new process for that purpose. By the disallowance of the Mines Act all these interests will be disturbed and capitalists will begin to doubt the constancy of the government with regard to their mining policy. You will be asked to impose an export duty where we impose a license fee. Both political parties have accepted the policy of developing our mineral resources along the lines of the Mines Act. Are you prepared to take the responsibility which may follow such a course? We will certainly have to resist it and oppose it and antagonize it by every means in our power, and with the decision of the Court of Appeal, already cited, we think our position sufficiently strong constitutionally to make a good defence. Would it not, therefore, be reasonable, that the Act should be allowed to stand, its ultimate interpretation to be left with the courts?

I can well understand where an Act of a provincial legislature is clearly *ultra vires*, the Minister of Justice is bound to advise its disallowance, unless amended or repealed by the enacting body. The Mines Act is not in my opinion of this character. And where the circumstances are such that the enacting body has no opportunity to reconsider its own Act, and where there are doubts as to the invasion of the constitution, it is most reasonable that the courts as the recognized exponents of the constitution, should be permitted to settle such doubts.

Still another consideration. Why not let us submit a case to the Court of Appeal, as has already been done, repeatedly with respect to previous legislation, and thus settle judicially a matter, which, if pronounced upon adversely by your department, will certainly become a vexatious and disturbing political controversy?

Hoping you may acquiesce in the reasonableness of this request, I remain,

Yours truly,

G. W. ROSS.

The Minister of Justice to the Premier of Ontario.

DEPARTMENT OF JUSTICE, OTTAWA, 7th May, 1901.

MY DEAR SIR.—On 25th April, I wrote you in reference to your legislation, known as "The Act to amend the Mines Act," and on 28th April, I received a letter, dated the 27th, from you, in which you state, that on 20th December, a report was transmitted to my department by your Attorney General, setting forth the grounds on which your government considered the Mines Act was within the jurisdiction of the legislature; and you inform me that had I still insisted upon my views while the legislature was in session, you would have endeavoured to have met my objections by such modifications of the Act as would have been necessary.

I regret that there should be any misunderstanding with regard to the matter. Your letter came during the holidays, when I was absent from the city, and upon my return we were so much engaged in preparation for the session, that no further discussion of the subject with your government was then had. Indeed, I supposed that when you received no letter from me acquiescing in the opinions of your Attorney General, there would not be much room to doubt that this department adhered to the opinions which had already been conveyed to your government.

You undertake to strengthen the opinion you there express, by referring to the Fisheries Act, and to the Extra-Provincial Corporations Act, in which you say your government had acquiesced in all the amendments that I had suggested. Perhaps it is just as well that I should, at this point, remind you that in respect to neither of these provincial statutes have you acquiesced in the view expressed in my communications to you in regard to them, nor have you, so far as the Fisheries Act is concerned, adopted the course which was suggested, in the event that your government were unwilling to make all the changes that we regarded as essential. I certainly understood that if our objections to your fishery regulations were not fully met by the proposed changes in your law, the whole law, as it then stood, would be repealed and re-enacted, with such amendments as you were willing to make, in order that another year would be given to arrive at a conclusion in respect to all controverted matters that remained undealt with. But, instead of this, the objectionable provisions of your law, which had not been removed by the proposed amendments, were allowed to stand as a part of the statute objected to; so that you force us to act promptly, in order to protect Dominion authority from provincial encroachment. Neither the Fisheries Act, nor the Extra-Provincial Corporations Act are now, after the session, much more satisfactory in form than they were before. I may here remark that, in respect to the Extra-Provincial Corporations Act, my letter of 19th March has since remained unanswered, and yet what subsequently transpired shows that I could not infer from your silence what you think you were warranted in inferring from mine, for I do not find this inference sustained by your subsequent legislation.

You say that you have transmitted a despatch on a matter of supreme importance to the province, of which no notice was taken, and to which there was no reply, and you complain of having an Act of the legislature disallowed without having been afforded an opportunity of amending the same, had you thought proper to do so. I have already stated that your letter, having been written during the holidays, and the pressure of work in getting ready for the session which immediately followed, had led to its being over-looked at the time. But I think the proper inference from the facts was not that you were to conclude that I was converted to your way of thinking, but that the opinions expressed by me were still adhered to. I submit that it is an unusual proceeding to rely upon a doubtful inference upon a question which you pronounce one of supreme importance to the province, and especially where it was so easy to substitute fact for such an inference by a brief communication. I may say that in respect to the Extra-Provincial Corporations Act, your laches is the same as that of which you complain on my part. I received no answer to my letter of 19th March, and

yet I find you did not abandon your own previous contention by any subsequent Act of legislation.

You may say that the Mines Act is not an Act for the imposition of taxes in the nature of an export duty, but on the contrary, it is an Act imposing certain charges by way of license upon the property of the Crown on condition that that property shall be disposed of in a certain manner. I dissent from this opinion. You impose a tax amounting to more than 100 per cent upon an article, if it is exported from the country; but if this burden was imposed for revenue, the failure to export did not change your necessities. You remit the taxation, if the ore is refined within the Dominion; so that to one man it results in confiscation, and upon another it imposes no burden. But you do not confine the provisions of your bill to the lands of the Crown. You so undertake to regulate the use which the proprietors may make of the products of their mines, in which the title of the Crown has been conveyed away, as to deter them from carrying on mining operations.

You say, "Surely you do not propose to abridge the right of the Crown by license to dispose of its own property?" Certainly not. But I do object to a provincial government and legislature, whose interest in certain lands had been parted with, undertaking to regulate, by their legislation, the commerce of the country in respect to the products of those lands. When the ores are made articles of merchandise abroad, they are under the jurisdiction of Canada, and not under the jurisdiction of the province, and it is the parliament of Canada, and not the legislature of a province, that has the power to make regulations respecting commerce, and that must settle the policy to be pursued by such mining regulations.

You ask, why we did not disallow the Act requiring pine logs to be manufactured into lumber in Canada? My answer is, because the Act regulating the exportation of pine logs was confined to logs cut upon lands, which the Crown still held, and therefore in respect to which your government had the right to part with the property in those logs upon such conditions as you saw proper. Your law upon this subject was an instruction by the legislature to the executive, in which it set out the conditions upon which they would authorize the provincial administration to part with the proprietary interests of the province in these logs. But you could not have applied such a law to the products of the land, which belonged to private proprietors, and in which the Crown in the province had no longer any property. And so it is not a fact that the principle of the Mines Act, and of the Act relating to the exportation of saw-logs cut upon the Crown lands of the province, is precisely the same. Nor is the example which you cite from the province of Quebec, a case in point. The Quebec government charged a royalty of \$1.90 per cord upon pulp-wood, with a rebate of \$1.50 if such pulp-wood were manufactured into pulp within the province of Quebec. Here again, the government of Quebec were dealing with wood which was the property of the Crown, and not with wood which was the property of private parties.

A friendly consideration on the part of governments must be mutual, and not entirely one-sided. The government of Canada cannot afford to have the field of its unquestioned jurisdiction invaded, and take no steps to protect those interests from usurpation which the constitution has placed under its jurisdiction. Under the provisions of your law, if Dr. Mond should undertake to transport from the mines upon his own property, and which he purchased, entirely free from such restrictions as you now impose, to his manufacturing establishment in Birmingham, he would be obliged to pay a license fee largely in excess of the total cash value of the ore mined from his own lands. And this policy is adopted against the exportation of the products of those lands to the Mother Country, which has never put any restrictions of any kind in our way.

By your legislation, you practically have done this: You tell him that if he manufactures this ore in any part of Canada, no matter where, no such charge shall be made upon him; if he undertakes to carry it to Birmingham, he must pay a larger sum for the liberty of sending it out of the country than the ore dug from his own

mines will bring in the English market. I do not understand how you can persuade yourself that this is not an export duty, imposed by the legislature of the province of Ontario, for the purpose of regulating trade for Canada, or rather, for the purpose of prohibiting trade out of Canada, in respect to this article. It becomes a reward to the man who retains the ore here, if he can find in Canada, not in Ontario only, a market for it. It is a punishment to him who sends it away, and so it cannot be a burden imposed for revenue.

Would it not be well for you and the Attorney General, or some of your colleagues, to meet with us, and see whether some way out of the difficulty which you have created by this most unusual legislation may not be discovered? Certainly, the three statutes to which I have referred are, from my point of view, undoubted invasions of Dominion authority, and quite unwarranted by any provision of the British North America Act. I must say that it appears to me you have assumed in this legislation that the jurisdiction of the federal authorities and the responsibility of the federal government are not entitled to any consideration from the government of Ontario.

Yours, &c.,

DAVID MILLS,
Minister of Justice.

(Approved 11 May, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 24 of the statutes of the province of Ontario, passed in the sixty-third year of Her late Majesty's reign (1900), assented to 30th April, and received by the Secretary of State on 18th May, intituled "An Act respecting the Licensing of Extra-Provincial Corporations."

The term "extra-provincial corporations" is defined by this Act to mean "a corporation created otherwise than by or under the authority of an Act of the legislature of Ontario."

Section 2 mentions certain classes of extra-provincial corporations which are not required to take out any license under the Act. These include corporations licensed or registered under the provisions of "The Ontario Insurance Act," or of "The Loan Corporations Act," and corporations liable to payment of taxes imposed by chapter 8 of the Ontario statutes for 1899, intituled "An Act to supplement the revenue of the Crown in the province of Ontario."

Section 3 mentions certain classes of extra-provincial corporations which are required to take out license under the Act. These include corporations other than those mentioned in section 2, created by or under the authority of (a) an Act of the legislature of the old province of Canada, or by royal charter of the government of that province authorized to carry on business in Upper Canada but not carrying on business in Ontario at the date of the commencement of this Act; (b) an Act of the Dominion of Canada and authorized to carry on business in Ontario, and (c) extra-provincial corporations not coming within any of the classes enumerated in sections 2 and 3, which latter would include corporations created and authorized by the parliament of the United Kingdom.

It is provided by section 6, as to extra-provincial corporations required under the provisions of section 3 to take out a license, that none of these shall carry on within Ontario any business, unless and until a license under this Act so to do has been granted, and unless such license is in force: provided, that the taking of orders for, or the buying or selling of goods by travellers or by correspondence, if the corporations have no resident agent or representative and no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of the Act.

Section 7 enacts that an extra-provincial corporation required to take out a license may apply to the Lieutenant Governor in Council for a license to carry on its business or part thereof and exercise its powers or part thereof in Ontario, and upon the granting of such license such corporation may thereafter, while such license is in force, carry on in Ontario the whole or such parts of its business and exercise in Ontario the whole or such parts of its powers as may be embraced in the license, subject, however, to the provisions of the Act, and to such limitations and conditions as may be specified in the license. The following section authorizes the Lieutenant Governor in Council to make regulations respecting, among other things, the forms of licenses, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under the Act, and also to make orders with respect to particular cases where the general regulations may not be applicable, or where they would cause unnecessary inconvenience or delay.

It is to be observed here that these corporations are forbidden by the Act to do business in the province without license, and although it would appear from the above mentioned sections and section 4 that it would be the duty of the provincial government to issue licenses to such corporations upon their complying with the provisions of the Act and the regulations, yet the licenses may be subject to limitations and conditions, the nature of which are not stated in the Act, and which depend upon regulations to be made from time to time by the Lieutenant Governor in Council; and further, that special limitations and conditions may be imposed in particular cases, so that there must be considerable uncertainty as to how far a corporation would be licensed in any case to carry on the business intended or authorized by its charter.

Section 13 authorizes the Lieutenant Governor in Council to suspend or revoke any license in whole or in part for default in observing or complying with the limitations and conditions of the license.

Section 14 provides a penalty against any corporation required to take out a license for carrying on business without such license, and renders such corporation, while unlicensed, incapable of maintaining any action, suit or other proceeding in the courts of Ontario in respect of any contract made within the province or in connection with business carried on contrary to the provisions of section 6.

Section 18 establishes fees to be taken upon the granting of licenses.

The question as to the right of a provincial legislature to limit the authority granted to a corporation by the Imperial parliament or the parliament of Canada has heretofore on several occasions been considered by the government of Canada.

The undersigned apprehends that no argument is required to establish the invalidity of such a provincial Act so far as concerns the powers conferred by the parliament of the United Kingdom, the Acts of which, where intended to apply to a colony or province, must in all cases be paramount. The undersigned conceives that it is equally beyond provincial authority to prevent, or in anywise limit, the exercise of the powers of a company conferred by the parliament of Canada relating to any of the subjects specially enumerated in section 91 of the British North America Act. In both these cases the incompetency of the provincial legislatures has been already affirmed by the Dominion government.

Your Excellency's government is now, however, perhaps for the first time called upon to deal with a provincial Act, which is clearly intended to prevent all Dominion corporations, save those falling within the classes mentioned in section 2 of the present Act, from doing any business within the province, unless thereunto licensed by provincial authority, and which is intended further to confer a discretion upon the provincial government as to the conditions, terms and limitations upon which such licenses may be granted, the exercise of which discretion may involve limitation of the powers which parliament has conferred, and requirements which may render the execution of those powers burdensome or unprofitable.

In 1887, Sir John Thompson, then Minister of Justice, had occasion to report upon an Act of the province of Quebec, 49-50 Victoria, chapter 39, intituled "An Act

to authorize certain corporations and individuals to loan and invest money in this province." He stated that the right of the Dominion parliament to establish a corporation having powers and civil rights in more than one province had been most conclusively established; that the power of provincial legislatures in regard to the establishment of corporations was limited by section 92 of the British North America Act to the incorporation of companies with provincial objects and matters of a merely local and private nature in the province, while the powers of the Dominion parliament extend to all matters not coming within the classes of subjects assigned exclusively to the legislatures, and that it followed, therefore, that a statute relating to the incorporation of a company, which was beyond the authority of a provincial legislature, would be within the competency of parliament. The minister stated further that the right of a corporation so created by the federal authorities to hold lands or to make contracts in the several provinces in which it is established as a civil person, might be dependent upon the general law of each province as to corporations, but could not, in his opinion, be restricted by any provincial legislation aimed at corporations established by the federal parliament, and he quoted high judicial decisions in support of these views. Sir John Thompson would have recommended the disallowance of this statute had it contained the provisions which the present statute does, prohibiting Dominion companies from doing business without a license. He stated, as the ground for refraining to recommend disallowance, that while the statute empowered the provincial secretary to issue licenses to the companies referred to, and proposed to convey authority to such companies to do business under such licenses, it did not contain any negative provision forbidding the companies to do business without licenses, and that it did not establish any penalty for non-compliance. The minister considered, therefore, that the Act seemed incapable of doing harm or obstructing the operation of companies duly authorized or doing business within the scope of their lawful constitutions, except in so far as it might raise doubts as to the necessity for such a license. This report of the Minister of Justice was approved by His Excellency in Council on 9th August, 1887, and is printed on pages 339 to 342 of the compilation of Dominion and provincial legislation, 1867-95.

In 1891, upon the recommendation of Sir John Thompson, a statute of the province of Manitoba, 53 Vic., chap. 23, intituled "An Act to authorize companies, institutions or corporations incorporated out of this province to transact business therein," was disallowed. The minister in his report recommending disallowance referred to his previous report upon the Quebec statute, 49-50 Vic., chap. 39, and he remarked that, for the reasons therein stated, the Act then under review in so far as it related to companies having the powers mentioned in the Act, by virtue of legislation from the parliament of the United Kingdom or from the parliament of Canada, was *ultra vires* of a provincial legislature, and upon that reason, as well as the further reasons stated in his report, he based his recommendations. This report of the Minister of Justice was approved by His Excellency in Council on 4th April, 1891, and is printed in the volume aforesaid at pages 941 to 945.

In 1896 another statute of the province of Manitoba, 58 Vic., Ch. 4, intituled: "An Act respecting corporations incorporated out of Manitoba," was disallowed by His Excellency in Council because of the incompetency of the legislature to limit or forbid the exercise of powers lawfully conferred by the parliament of Canada. Reports of the Minister of Justice of the time holding these views, were approved by His Excellency in Council on 8th November, 1895, and 12th March, 1896. These reports, and the correspondence connected therewith, are printed at pages 1005 to 1010 of the above mentioned volume.

Afterwards still another statute was enacted by the legislative assembly of Manitoba, 60 Vic., Ch. 2, containing all the provisions which occasioned the disallowance of the Act 58-59 Vic., Ch. 4. Sir Oliver Mowat, then Minister of Justice, in his memorandum of 15th November, 1896, pointed out that it had been held that the

Dominion had power to incorporate a company for the whole Dominion, though the objects of the company were provincial, a provincial legislature having no power to authorize a company to do business outside of the province. He stated that it was unnecessary at that time to express any opinion as to whether a provincial legislature might require that a license should be obtained by such a company before it could do business in the province, but that there could be no doubt, where a company was incorporated by the Dominion in the exercise of any one or more of its special and exclusive powers of legislation enumerated in section 91 of the British North America Act, a provincial legislature had no authority to impose any such condition. This Act was afterwards disallowed upon the report of the undersigned concurring in the view of his predecessor, which report was approved by His Excellency in Council on 14th March, 1898. The particular point upon which the disallowance of the two latter statutes proceeded was the incapacity of a provincial legislature to limit or affect the operation of Dominion statutes enacted in the execution of any of the powers particularly enumerated in section 91. The present statute is open to the same objection, although not so far reaching, because under section 2 of the Act in question some Dominion companies have been excepted from the operation of the Act.

It has been the policy of the parliament and government of Canada for many years, in the exercise of undoubted constitutional and statutory rights to incorporate companies for the purpose of doing business throughout the Dominion, or in two or more provinces thereof, not only as to matters relating strictly to the enumerated subjects of Dominion jurisdiction, but also as to those matters which, if limited to the territory of any one province, would be within the exclusive legislative authority of that province. This jurisdiction in the Dominion arises, in the opinion of the undersigned, not only under the general authority of the Dominion relating to the peace, order and good government of Canada, but also as affecting the regulation of trade and commerce, a subject specially assigned to the exclusive legislative authority of Canada.

In the case of the Citizens' and Queen Insurance Company vs. Parsons (1 Cartwright, at page 278), the Judicial Committee of the Privy Council held that the regulation of trade and commerce would include the regulation of trade in matters of inter-provincial concern, and, it may be, would include the general regulation of trade affecting the whole Dominion. It has also been held by the same authority that the parliament of Canada alone can constitute a corporation with power to carry on business throughout the Dominion (Loranger vs. Colonial Building and Investment Association, 3 Cartwright, at page 128). This latter statement refers to companies incorporated, not under the powers conferred within the scope of any of the subjects specially enumerated in section 91, but to companies, the incorporation of which, but for the fact that their powers or capacity to do business are to extend beyond the limits of any one province, would be solely within provincial authority.

In the case of the liquor prohibition appeal (1896, Appeal Cases, at page 363), Lord Watson delivering the opinion of the committee and referring to the Citizens' and Queen Insurance Company vs. Parsons, says, "It was decided that in the absence of legislation upon this subject by the Canadian parliament the legislature of Ontario had authority to impose conditions as being matters of civil right upon the business of fire insurance, which was admitted to be a trade, so long as those conditions only affected provincial trade." Construing this decision with that in the Citizens' case the undersigned apprehends that legislation affecting interprovincial trade or affecting trade in matters of interprovincial concern, would be *ultra vires* of a provincial legislature as being comprehended within the regulation of trade and commerce.

The question, therefore, arises whether legislation can be upheld by which a province professes to take power to prohibit the right of trading within the province, of a company incorporated by the exclusive authority of parliament to trade throughout the Dominion or in two or more of the provinces. Such a company has capacity within the scope of its charter to trade within the province and elsewhere in the

Dominion just as an individual has. An enactment by a province forbidding residents of or persons doing business in any other province to trade in the first named province would seem to affect more than provincial trade. It would be a matter of inter-provincial concern, and, therefore, *ultra vires* as relating to the regulation of trade and commerce; otherwise all interprovincial trade, which the judicial committee holds that the Dominion has the right to regulate, could be rendered impossible by the provinces.

If the right of trading between individuals of different provinces be a matter of interprovincial concern, so also must be the right of trading by a company incorporated by parliament for the purpose of trading in different provinces. It is incorporated for the purpose of a trade which is not local or provincial,—a trade which concerns at least two provinces; in other words, a trade which the Dominion has exclusive authority to regulate; and hence, though such a company is subject to all the general laws relating to property and civil rights and private and local matters of the respective provinces where it does business, it cannot be bound by provincial legislation directed against it as an extra-provincial company in respect of its trade which concerns the whole Dominion or several provinces.

It is the opinion of the undersigned that inter-provincial trade, or trade that concerns the whole Dominion, cannot be prohibited or restricted by a province, and, if this be so, it follows that the agencies of such trade established by the Dominion cannot competently by provincial legislation, be prevented from executing their powers, or restricted in operations within the scope of their Dominion charters.

It would appear, therefore, that the Act in question is *ultra vires*, and that so far as it has any operation as to Dominion corporations, it is likely to interfere with the carrying into effect of the policy of Dominion legislation, unquestionably competent to parliament, with regard to the incorporation of companies intending to do business in Ontario.

It will be observed, moreover, that among the corporations required to take out licenses as a condition to their transaction of business in Ontario, are included corporations constituted by Act of the late province of Canada authorized to carry on **business in Upper Canada**, but not carrying on business there at the date of the commencement of the Act. The undersigned apprehends that there can now be no doubt that the legislature of either of the provinces of Ontario or Quebec has no power to modify or repeal the provisions of the charter of a corporation created by the legislature of the late province of Canada for the purpose of doing business in Upper and Lower Canada. Companies so incorporated have by virtue of their constitutions both the capacity to do business within the scope of their powers and the right to exercise these powers to the fullest extent within the two provinces, and it is, according to the highest judicial authority, incompetent to either of these legislatures to modify or repeal the provisions of such an Act. Therefore, the legislature of Ontario cannot effectively prohibit such a corporation from transacting its business within Ontario, or confine the execution of its powers by conditions or limitations established under the authority of the Lieutenant Governor in Council, or otherwise, as it is sought to do by the present Act.

For the foregoing reasons the undersigned considers that this Act ought not to be allowed to remain as it stands.

The enacting authority is entitled to whatever force the legislation may derive through the powers mentioned in section 92 to make laws in relation to "direct taxation within the province in order to the raising of a revenue for provincial purposes," and "shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes," but these must be construed consistently with the authority of the Dominion to regulate trade and commerce and the other exclusive powers of Dominion legislation; and the undersigned does not consider that a provincial legislature ought to require the payment of a license fee as

a condition to a Dominion corporation doing business within the province, or to exact license fees discriminating between the trading corporation established by parliament, and those established by the provincial legislature.

The undersigned has had some correspondence with the provincial authorities, in consequence of which they have promoted legislation which was enacted at the last session of the legislature amending section 7 of the Act, by providing in effect that the license to be issued shall not be subject to any limitations or conditions which would restrict the right of any corporation constituted by the Dominion or the late province of Canada to carry on and exercise in Ontario all the business and powers which by its Act or charter of incorporation it may be authorized to carry on and exercise in Ontario. While this proposal is satisfactory so far as it goes, it does not, in the opinion of the undersigned, sufficiently respect the authority of parliament and the rights conferred by parliament in relation to the other matters to which he has referred.

The undersigned considered, and he so informed the Prime Minister of the province in effect, that the Act should be further amended so as either to exempt corporations created by parliament from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fees required under the Act, should be imposed equally upon corporations created by the Dominion and by the legislature of Ontario.

The undersigned considers it impossible to admit consistently with the general interests of Canada, the principle of interference with Dominion policy by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and he apprehends that disallowance is the appropriate remedy in such a case. The provincial government has, however, by an amendment already made gone a considerable way to remove some of the most serious objections to the Act, and after further conference the undersigned is encouraged to believe that the provincial government will at the first opportunity promote further legislation, to either exempt Dominion corporations from the statute, or establish equality with regard to license fees and taxation as between the Dominion and provincial companies. He considers, however, that Your Excellency's government should have a formal assurance of this intention from the government at Toronto, and he recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, with a request that he inform Your Excellency's government as to whether at the first opportunity for so doing, his government will promote further amendments to the Act in question as hereinbefore suggested.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

(Approved 11 May, 1901)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1901.

To His Excellency the Governor General in Council:

The undersigned has further considered chapter 50 of the statutes of the province of Ontario, passed in the sixty-third year of Her late Majesty's reign, intituled "An Act respecting the Fisheries of Ontario."

Section 12 provides that fishery licenses or permits may be issued "subject to such terms, conditions or limitations as may be contained therein or made part thereof, or as shall be prescribed by Order in Council, or by this Act," provision having been previously made authorizing the Lieutenant Governor in Council to make regulations for the purpose of carrying the provisions of the Act into effect.

Section 13 prohibits fishing in provincial waters by any means other than angling (without first having obtained a lease or license from the provincial authorities.

Section 15 authorizes the commissioner to issue fishery licenses for fishing to be carried on in provincial waters, "subject always to such regulations, conditions and restrictions as may from time to time be made by the Lieutenant Governor in Council, or as may be contained in the license.

Section 22 provides that any fishing license or permit held by any person convicted of any contravention of the Act, or of any of the conditions of the license, may be annulled and cancelled by the commissioner.

Section 28 prohibits the taking of fish or fish spawn in any manner from provincial waters for the purpose of stocking, artificial breeding, or for scientific purposes, without a written permit so to do from the commissioner or deputy commissioner of fisheries.

Section 34 enacts that fishery overseers shall direct and determine where nets shall be set and the distances to be maintained between each and every location of nets.

Section 35 provides that all nets shall be marked in a certain manner.

Section 36 authorizes disputes between persons relative to the position and use of nets and other fishing apparatus to be settled by the local fishery overseer, subject to appeal to the deputy commissioner of fisheries.

Section 38 prohibits any person from offering or exposing for sale any bass less than ten inches in length, or any whitefish, salmon-trout or lake trout weighing less than two pounds, undressed, taken or caught in provincial waters.

Section 39 prohibits common carriers from transporting out of the province any salmon trout, lake trout or whitefish weighing less than two pounds undressed taken or caught in provincial waters.

Section 44 provides that no speckled trout, bass or maskinonge taken or caught in provincial waters shall be exposed for sale in or exported from the province, before the first day of July, 1903, provided that fish caught by any tourist or summer visitor, not exceeding the lawful catch of two days' angling, may be taken out of the province by such tourist or summer visitor when leaving the province.

Section 45 provides that no sturgeon shall be caught, taken or killed by any means whatever without a license first had and obtained, and that in the inland waters of the province none shall be taken between 1st April and 10th May, but that nothing in this section, or in section 47, shall be deemed to restrict close season prohibitions.

Sections 46, 47, 48, 49, 50 and 51 are intended to regulate the number and size of fish of the various kinds therein mentioned which may be taken, the manner and times of catching them, and the period for which licenses may be issued.

It has been finally determined that the enactment of fishery regulations and restrictions is within the exclusive competence of parliament, and not within the powers of provincial legislatures. The kind of legislation which the provinces may pass with respect to the fisheries under their authority over property and civil rights, or the management and sale of public lands, has also been indicated by the judicial committee. It relates to property, its disposition and the rights to be enjoyed in respect to property, and it is expressly held that such legislative authority does not extend to any restrictions or limitations by which public rights of fishing are sought to be limited or controlled.

The undersigned entertains no doubt that the particular provisions of this Act to which he has referred, are in the main regulations controlling or relating to the manner or times of fishing or the kinds, sizes or numbers of fish which may be taken, and that they are, therefore, *ultra vires* of the provincial legislature.

Upon reference to the Minister of Marine and Fisheries, the undersigned was informed that these regulations are calculated seriously to interfere with the policy of his department and the administration of the fishery laws and regulations of the Dominion.

It, therefore, seems inexpedient to allow these provincial regulations to remain. They conflict with the policy and legislation of the Dominion, and they are, the undersigned apprehends, by the judgment of the judicial committee demonstrated to be *ultra vires*.

The undersigned some time ago pointed out these objections to the Commissioner of Fisheries of Ontario, and they were discussed to some extent between the commissioner and his legal adviser, on the one hand, and the undersigned on the other. It was admitted on behalf of the province that some of these provisions could not be upheld, but it was contended that others should be maintained, and the undersigned suggested for the consideration of the provincial government that the Act should be repealed, and, if thought desirable on behalf of the province, that it should be re-enacted, subject to such modifications as seem necessary, having regard to the limitations of the enacting authority. A statute has since been enacted by the legislative assembly, entitled: "An Act to amend the Ontario Fisheries Act, 1900," which repeals or amends a number of the sections in question, substituting also some additional provisions. This amending Act substitutes for section 10 of the previous statute the following provisions:—

"The Lieutenant Governor in Council may, from time to time, make regulations, and may, from time to time, vary, amend, alter or repeal all and every such regulations as may be found necessary or deemed expedient for the better management and regulation of Crown lands leased under the operation of this Act, or of regulations made thereunder, and the fishing rights thereto pertaining, or for the regulation of any fishing lease or license or permit which may be made or granted by virtue of this Act, or of said regulations, and to prevent the destruction of fish, and to forbid fishing in any waters within the province, except under the authority of a fishing license, and for the purpose of carrying the provisions of this Act into effect, and all regulations so made shall have the same force and effect as if herein contained and enacted, and every offence against any such regulation may be stated as having been made in contravention of this Act."

By sections 13 and 14 of the amending Act, sections 44 and 45 of the original Act are repealed, and the following provisions substituted therefor:—

"44. No one shall sell, barter or traffic in speckled trout, bass or maskinonge taken or caught in provincial waters before the first day of July, 1903."

"45. No sturgeon shall be caught, taken or killed in provincial waters by any means whatever without a license first had and obtained from the commissioner or deputy commissioner, subject to any regulations or restrictions made or prescribed by or under any lawful authority in that behalf."

Section 10 as now enacted seems to be open to a construction which would authorize the making of regulations in excess of any which are competent to a provincial legislature, particularly when read in connection with the other legislation contained in these two Acts.

The undersigned entertains no doubt that sections 44 and 45 directly affect the regulations of the fisheries.

Sections 35 and 36 of the original Act remain; these relate to the marking of nets and the use of nets.

Section 39 is not affected by the amending Act, and it prohibits common carriers from transporting out of the province trout or whitefish weighing less than two pounds.

Some of the provisions of section 51 as they stand are also, to say the least, questionable.

The original Act as amended has been reconsidered at the Department of Marine and Fisheries, and the undersigned is informed by the minister of that department

that the sections above referred to, or some of them, are found to be so far unsatisfactory as to call for further action on behalf of Your Excellency's government.

The undersigned would consider it necessary to recommend disallowance of both these Acts were it not for the fact that upon conference with the representatives of the local government, they had expressed their willingness to make further amendments at the next session of the legislature to repeal the objectionable provisions of these Acts. He considers, however, that Your Excellency's government should have a formal assurance of this intention from the Ontario government, and he recommends therefore that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, with a request that he inform Your Excellency's government as to whether at the first opportunity for so doing, his government will promote further amendments of these two Acts, so as to remove the remaining provisions above referred to affecting the regulation of the fisheries.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

(Approved 11 May, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1901.

To His Excellency the Governor General in Council:

The undersigned, referring to Ch. 13 of the statutes of the legislative assembly of the province of Ontario, passed in the sixty-third year of Her late Majesty's reign (1900), intituled "An Act to amend the Mines Act," has the honour to report that he has had under consideration the petition of the owners or persons interested in nickel or nickel and copper properties in the districts of Nipissing and Algoma, and copy of an order of the executive council of Ontario, approved on 28th December last, with a copy of the report of the Attorney General of the province upon the petition. Copies of the said petition and report of the Attorney General are submitted herewith.

The Act provides that no owner of any mine shall carry on the business of mining for any ore or mineral in respect of which a license fee is imposed, without first taking out a license under the provisions of the Act. There is a license fee of \$10 established, and section 7 enacts that every person carrying on the business of mining in the province shall pay a license fee upon the gross quantity of the ores or minerals mined, raised or won during the preceding year from any mine worked by him, to be paid to the Treasurer of the province for the use of the province, at the following rates, or such less rates as may be substituted by proclamation of the Lieutenant Governor, viz:—

- (a) For ores of nickel, \$10 per ton, or \$60 per ton if partly treated or reduced.
- (b) For ores of copper and nickel combined, \$7 per ton, or \$50 per ton if partly treated or reduced.

These fees are made a charge upon the lands described in the license on which the mine is situate.

It is provided by section 10 that where ores or minerals that have been mined, raised or won in the province, are smelted or otherwise treated in the Dominion of Canada by any process, so as to yield fine metal, or any other form of product suitable for direct use in the arts without further treatment, then and in every such case the fees provided by the Act or such proportion thereof as may be fixed by the Lieutenant Governor in Council shall be remitted, or if collected, shall be refunded under such regulations as the Lieutenant Governor in Council may prescribe.

The petitioners refer to the speech of the Lieutenant Governor at the opening of the session, to the remarks of the Commissioner of Crown Lands in moving the

second reading of the Bill, and the observation of the Lieutenant Governor in assenting to it, as showing that the Act is not intended as a taxing Act, or for the purpose of raising revenue, but with the design "of regulating the trade and commerce of Canada, and also for the purpose of authorizing the Lieutenant Governor in Council to impose what in reality is an export duty on nickel and nickel and copper ore and matte exported from the Dominion." They state that the imposition of these license fees, unless remitted, will be fatal to the nickel industries of the districts of Algoma and Nipissing, and that the menace to the said industries contained in the said Act is extremely prejudicial for these and the other reasons stated in the petition.

The Attorney General of Ontario, in commenting upon the petition, does not admit the statements of fact therein set forth, and he endeavours to support the Act as a measure of taxation.

While the matter was still under consideration upon the petition and the memorandum of the Attorney General, a memorial was presented to the undersigned from Mr. J. M. Clark, counsel of Ludwig Mond, F.R.S., of London, England, objecting to the Act, and asking for disallowance. Copy of that memorial is submitted herewith, together with copies of further memoranda from Mr. Clark in support or extension thereof. Copy of Mr. Clark's said memorial having been submitted by the undersigned to the Prime Minister of Ontario with the statement that the points raised by Mr. Clark were deserving of serious consideration, and referring especially to the fact that sections 4 to 12 of the statute had not yet been brought into force, and requesting the observations of the provincial government thereon, Mr. Ross stated that the legislature had been prorogued before the further questions stated in Mr. Clark's memorial were raised, and there was, therefore, no opportunity to amend the Act within the time limited for disallowance. Mr. Ross further argued in support of the Act, and subsequently there was a conference between the Prime Minister, the Attorney General of Ontario and the undersigned. It is observed that under section 13 of the Act it is enacted that the provisions of sections 4 to 12, which are the objectionable sections, shall be brought into force by proclamation of the Lieutenant Governor in Council, who has power to proclaim the whole or any one or part of these sections. None of these, however, have been proclaimed, and at the conference referred to it was considered that in view of all the circumstances it would be expedient that Your Excellency, instead of being advised to disallow the said Act, should be advised to submit a case to the Supreme Court of Canada for hearing and determination as to the validity of this statute, particularly with reference to the sections complained of; the governments in and by such case agreeing to a statement of the facts involved, with power to the court to draw the necessary inferences therefrom; the provincial government agreeing in the meantime not to bring any of the sections complained of into effect, without prejudice to the right of either party to appeal to the Judicial Committee of the Privy Council.

The undersigned is accordingly now taking steps to have such a case prepared and regularly submitted before the time for disallowance expires. He recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, and that the Lieutenant Governor be asked for a formal assurance that he concurs herein.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

The Deputy Minister of Justice to J. M. Clark, Esq., K.C.

DEPARTMENT OF JUSTICE, OTTAWA, 10th May, 1901.

SIR,—I am to state that it is considered inexpedient to disallow the Ontario Act amending the Mines Act, the provincial government having agreed not to bring the

objectionable sections into effect pending the decision of the question as to their validity by the courts. It is intended to submit the question by reference to the Supreme Court of Canada, and upon that reference you will, no doubt, have an opportunity of being heard on behalf of your client, Dr. Mond. In the meantime, however, it may be that you would desire some facts to be stated in the reference, which would be material for the court to consider in connection with the question of *ultra vires*, and if so, I would be glad to receive such a statement from you at your earliest convenience, so that I may consider the propriety of stating such facts in the reference.

I have, etc.,

E. L. NEWCOMBE,

Deputy Minister of Justice.

Copy of Order in Council, approved by the Lieutenant Governor, the 14th May, A.D. 1901.

The committee of Council have had under consideration the annexed report of the honourable the Premier with reference to the following reports of the honourable the Minister of Justice:—

1. With respect to chapter 50 of the statutes of Ontario, passed in the sixty-third year of Her late Majesty's reign, entitled "An Act respecting the Fisheries of Ontario," and also as to chapter 37 of 1 Edward VII., entitled "An Act to amend the Ontario Fisheries Act, 1900."

2. With respect to the provisions of an Act passed in the sixty-third year of Her late Majesty's reign, entitled "An Act to amend the Mines Act," and

3. With respect to the Acts respecting Extra-provincial Corporations.

The committee concurring in the report of the Premier, advise that a copy thereof be forwarded to the honourable the Secretary of State for the consideration of the Dominion government.

Certified.

J. LONSDALE CAPREOL,

Asst. Clerk, Executive Council.

Report of the Premier of Ontario.

TORONTO, 14th May, 1901.

The undersigned has the honour to report for the consideration of His Honour the Lieutenant Governor in Council, that he has received a Minute of the committee of the honourable the Privy Council, approved by His Excellency on the 11th of May, 1901, advising concurrence in the report of the Minister of Justice, dated 3rd of May, of the same year, with respect to chapter 50 of the Statutes of Ontario passed in the sixty-third year of Her Majesty's reign, entitled: "An Act respecting the Fisheries of Ontario," and also as to Ch. 37 of 1 Edward VII., entitled "An Act to amend the Ontario Fisheries Act, 1900."

The jurisdiction of the Dominion and provincial governments respectively, as to fisheries has been the subject of argument before the Privy Council, and notwithstanding the comprehensive character of the judgment in the case there appears to be no small difficulty in determining, with absolute certainty, to what extent provincial governments have the right to regulate fisheries within their respective provinces. At a conference between the Minister of Marine and Fisheries and the Commissioner of Public Works, it was agreed before the last session of the legislature, that certain amendments should be made to the Act of 1900. These amendments were embodied in 1 Edward VII., Chap. 37. At a conference with the Minister of Marine and

Fisheries, held on the 9th instant, with the Attorney General and the undersigned, it appeared, after careful argument, that under the Act last mentioned the provincial government assumed to exercise certain control over the fisheries of the province which the Minister of Justice contends are *ultra vires* of the rights of the province.

The undersigned would therefore recommend that His Honour the Lieutenant Governor be advised to assure His Excellency, the Governor General in Council, that 'at the first opportunity of so doing his government would promote further amendments to these two Acts so as to remove the remaining provisions referred to in the report of the Minister of Justice, affecting the regulations of the fisheries, and that in the meantime no regulations shall be passed under either of these Acts to enforce the provisions of the sections objected to.'

The undersigned desires to add in this connection that the limited authority conceded to the provincial legislature by the British North America Act, as interpreted by the Privy Council, is entirely inadequate for the proper protection of the fisheries of the province. So long as the Dominion government is prepared to pass proper regulations for the protection of fish in the waters of the province, no harm may arise, but the undersigned is of the opinion that as the proprietary right in the fish, by the judgment of the Privy Council, is vested in the province, the province should have all the powers necessary to protect its own property, even to the extent of defining the close season for fishing in the waters of the province and limiting the quantity of fish to be taken and the mode of taking the same, as the legislature of the province may deem expedient.

In the opinion of the undersigned it would therefore be desirable that steps be taken, by conference with the Dominion government, to secure the amendment of the British North America Act extending the powers of the province in the direction herein indicated.

THE MINES ACT

In a report of the Minister of Justice dated 10th May last, and approved by the Privy Council of the Dominion of Canada, objection is taken to the provisions of an Act passed in the sixty-third year of Her late Majesty's reign, intitled: 'An Act to amend the Mines Act,' on the ground that the provisions of sections 4 to 12 (inclusive) are objectionable sections, and advising 'that a case be submitted to the Supreme Court of Canada for hearing and determining the validity of the statute particularly with regard to the sections complained of.'

Objection to this Act so far as the undersigned is aware, was first raised by Mr. Ludwig Mond, F.R.S., of London, Eng., through his attorney J. M. Clark. These objections were considered by the Attorney General of the province, and his answer, dated 20th December, transmitted to the Department of Justice. Later, on the 8th May, a conference was held between the members of the Privy Council of Canada, the Attorney General of the province and the undersigned, at which the constitutionality of the said Act was argued at considerable length, and at which it was agreed, on behalf of the undersigned, that without waiving the right of the province to pass the said Act, no loss would accrue to any public interest concerned, by a reference to the Supreme Court, as suggested by the Minister of Justice.

The undersigned would therefore recommend that steps be taken at once to have a case prepared on behalf of the province and accordingly submitted, reserving to the province the right to appeal from the decision of the said Supreme Court to the Judicial Committee of the Privy Council, if deemed expedient, and that in the meantime the sections 4 to 12 (inclusive) of the said Act be not proclaimed by His Honour the Lieutenant Governor, as provided by section 13 of the said Act.

The undersigned desires it to be clearly understood that in agreeing to such submission to the Supreme Court, the Dominion government shall aid by every means in its power, an early reference, and that should an appeal be taken from such decision,

similar diligence be exercised in bringing the case before the Judicial Committee of the Privy Council, as delay in determining the constitutionality of the sections complained of, might be prejudicial to the interests of the province.

EXTRA-PROVINCIAL CORPORATIONS

The undersigned has also the honour to state that he has received a report from the Minister of Justice with regard to the Acts respecting Extra-provincial Corporations in which the Minister of Justice states that he is prepared to suspend the right of disallowance of these Acts 'on receiving assurance that the provincial government will, at the earliest opportunity, promote further legislation to either exempt Dominion corporations from this statute, or establish equality with regard to license fees and taxation as between Dominion and provincial companies.'

As the provincial government has undoubtedly the right to impose taxation, for the purposes of revenue, on all corporations, no matter whence their authority is derived, the undersigned would not recommend that the province should waive this right. The undersigned would, however, recommend that any Act of the legislature under which a discrimination may be exercised against corporations having authority from the Dominion government should be so amended as to establish equality in regard 'to license fees and taxation between Dominion and provincial companies,' as suggested by the Minister of Justice and that legislation to that effect should be introduced and carried through at the next session of the legislature.

Respectfully submitted,
G. W. ROSS.

1 EDWARD VII, 1901

4TH SESSION, 9TH LEGISLATURE

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, December 31, 1901.

These statutes were received by the Secretary of State for Canada on 25th April last. They may be left to their operation without comment, except the following:—

Chapter 21. "An Act to amend the Ontario Insurance Act."

There has been referred to the undersigned a communication from Mr. H. T. Beck, barrister, of Toronto, dated 1st June last, submitting a petition from James Henry Saunders Hoover, seeking disallowance of this Act upon grounds stated by Mr. Beck as follows: "(a) The first section is *ipso facto* null and void in so far as it enacts certain new provisions, and states that they were law from 14th April, 1892, when as a matter of fact they were never contained in the statute. (b) The Legislature has no jurisdiction to impair an existing contract which this Act attempts to do. The jurisdiction over 'property and civil rights' does not give these powers. (c) The local Legislature has no jurisdiction to pass an Act affecting pending litigation. This is usurping the original and appellate jurisdiction of the courts. The policy of the British North America Act was to place the courts beyond the power of either Dominion or local jurisdiction, dividing the power of appointing the judges and the constitution and procedure of the courts between the two jurisdictions. (d) The legislation was improperly and collusively obtained at the instance of the Registrar of Friendly Societies who misled the local Legislature as to the objects of the retrospective clause and the effect of it."

Copy of the petition is submitted herewith, as showing the facts and reasons upon which the petitioner relies. The undersigned also submits a memorandum of reasons for disallowance which has been received from Mr. Beck.

The undersigned caused to be sent to the Attorney General of Ontario a copy of these documents and of the other evidence submitted on behalf of the petitioner, and the Attorney General was asked for any observations which he might desire to make for the consideration of the undersigned in reporting upon the application. In reply the Attorney General sent to the undersigned copy of a memorandum prepared under his instructions by the Ontario Inspector of Insurance, and a copy of the certificate of the Master in Ordinary as to Mr. Hoover's claim. The Attorney General states that these documents in his view satisfactorily dispose of every question either of fact or law raised by Mr. Hoover or his counsel, and that it seems unnecessary to notice the very improper insinuations against the Inspector of Insurance. The memorandum of the Inspector of Insurance reviews the case in detail at considerable length supporting the legislation and the proceedings under it, but inasmuch as the undersigned has arrived at the conclusion that independently of this memorandum, Your Excellency's government ought not to interfere, he considers it unnecessary to submit the memorandum. It will be observed that the grounds urged on behalf of the petitioner do not affect the constitutional validity of the Act, nor do they point to any conflict between the statute and any matter of Dominion policy. It appears to be not unlikely that the legislation has interfered with pending proceedings and rights of contract, as they previously existed. A number of amendments are made to the Ontario Insurance Act by the first section, and it is declared that these shall be deemed and construed to declare the law of the province as the same existed and has existed since 14th April, 1893.

The undersigned conceives that Your Excellency's government is not concerned with the policy of this measure. It is no doubt *intra vires* of the Legislature, and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the Legislature, and the acts of the Legislature may be ultimately judged by the people. The undersigned does not consider, therefore, that Your Excellency ought to exercise the power of disallowance in such cases.

Chapter 30. "An Act to amend the Municipal Drainage Act."

There has been referred to the undersigned a letter from Mr. Douglas, K.C., of Chatham, in which he states that there are two clauses in this Act which the legislature has no power to pass, namely, section 1 and section 5, which limit the right of appeal to the Supreme Court. He says that under the Supreme Court Act there is express power in all cases to appeal where a tax or revenue is imposed, and that this amendment in effect overrules the Supreme Court Act. He claims that the present statute should, therefore, be disallowed. It will be observed that the first section provides merely that the order of the referee shall be subject to appeal to the Court of Appeal for Ontario, and that the decision of that court shall be final and conclusive as to all corporations affected thereby. The fifth section enacts that the decision of the referee in all applications and proceedings under the Act, not otherwise provided for as being final and conclusive between the parties, shall be subject to appeal to the Court of Appeal for Ontario, and that its decision thereon shall be final and conclusive and binding upon all parties to the application or other proceeding.

The undersigned considers that it is competent to a legislature to declare what the effect shall be of statutory proceedings authorized by the legislature. These sections appear to do no more. They cannot certainly affect, and are not expressed to affect, any proceedings or appeal competently authorized by parliament, and if the Supreme Court Act gives an appeal from the decisions in question, that right of appeal is not taken away by these provisions. If there be any question upon this point it may be fairly settled by the courts, and the undersigned does not consider it a case in which Your Excellency should interfere.

Chapter 37. "An Act to amend the Ontario Fisheries Act, 1900."

This Act was considered by the undersigned along with the Act which it amends, in his report approved by Your Excellency on 11th May last, and by executive minute of the Ontario government of 14th May last. Your Excellency's government was assured that at the first opportunity of so doing, the government would promote further amendments to these two Acts so as to remove the remaining provisions referred to in the report of the undersigned affecting the regulation of fisheries, and that in the meantime no regulations would be passed under either of these Acts to enforce the provisions of the sections objected to. In these circumstances the undersigned assumes that satisfactory amendments will be passed at the next session of the legislature, and it would not, therefore, be proper at present for Your Excellency's government to take any further action.

DAVID MILLS,
Minister of Justice.

Petition of J. H. S. Hoover to His Excellency the Governor General in Council

To His Excellency the Right Honourable the Earl of Minto, G.C.M.G., &c., &c., Governor General of the Dominion of Canada, in Council:

The humble petition of James Henry Saunders Hoover, of the City of Toronto, in the Province of Ontario, sheweth as follows:—

1. The Merchants Life Association is an insurance corporation and a Friendly Society within the provisions of the Ontario Insurance Act and the said association is now being wound up in the office of the Master in Ordinary of the Supreme Court of Judicature for Ontario under an order made by the said master on the 17th day of April, 1900, pursuant to sections 183 (9) of the Ontario Insurance Act.

2. Your petitioner is the holder of a policy of insurance on his life for the sum of \$1,000, payable upon his death, upon which all premiums were paid to the date of winding up order.

3. On or about the 19th day of April, 1901, an application was made on behalf of your petitioner before the said master in the winding up proceedings, for an order allowing the claim of your petitioner on the basis as directed by the Divisional Court on an appeal in the winding up proceedings by one Priscilla Catherine Vernon, another unmatured policy-holder, which application was by the said master dismissed, and your petitioner is now appealing therefrom.

4. Notice of your petitioner's application was served on the Registrar of Friendly Societies, and on the liquidator and receiver on the 13th day of April, 1901.

5. A certain Act was passed by the Legislative Assembly of the province of Ontario in the first year of the reign of His Majesty King Edward the Seventh, being chaptered 21, amending the Ontario Insurance Act as therein set forth, whereby, among other things it is declared that the provisions of section One of the said Act are to be deemed and construed to declare the law of the said province on and from the 14th day of April, 1892.

6. By said section it is entered among other things that in a Friendly Society registered as such under the said Act, no unmatured policies shall create any liability against the estate of the society in a winding up under such Act.

7. Your petitioner further shows that the said amending Act operates to impair contracts, and is intended to operate to impair your petitioner's contract of insurance, and it is not only retrospective, but it is an attempt to usurp the functions of the High Court of Justice and the judges thereof, in litigation now pending before said court, and to reverse or nullify the judgment of the said court, instead of leaving parties affected thereby to appeal therefrom if dissatisfied, and that said amending Act is therefore unconstitutional and contrary to the policy of the British North America

Act, 1867, and more especially to the provisions in said Act contained, whereby the provincial courts and judges thereof are not wholly within the jurisdiction and control of either the Dominion parliament or the local Legislature, and that the enactment is beyond the jurisdiction included in the words 'property and civil rights,' and that the said Act infringes upon the jurisdiction given to the Dominion parliament under the term 'Bankruptcy and Insolvency,' and that the amending Act is unconstitutional and void, in that it purports and attempts to declare that certain provisions therein contained were part of the statute law retrospectively to 14th April, 1892, when in fact these provisions did not appear in the statute.

8. Your petitioner shows that the said Act received its first reading on 1st April, 1901; its second reading on 4th April, 1901, and the Royal Assent on the 15th day of April, 1901.

9. Your petitioner further shows that the said amending Act was prepared by the Registrar of Friendly Societies without notice to your petitioner or his solicitor, and it was passed by the Legislature with undue haste and for the express purpose of defeating your petitioner's claim, and a large number of other similar claims, and that the Registrar of Friendly Societies obtained enlargements of appointments before the Master on misrepresentation and fraud, so as to prevent the claim of your petitioner and others from being disposed of before the said Act was passed, and that the said enactment was passed by the Legislature in ignorance of its effect and through inadvertance.

10. Your petitioner prays that the said amending Act be declared null and void and be disallowed under provisions of section 90 of the British North America Act, 1867.

And your petitioner will ever pray.

J. W. McCULLOUGH,

Solicitor for J. H. S. Hoover.

Hoover Petition.—Reasons for disallowance of Ontario Statute I Edward VII., Chapter 21

Section 1 (6) of the Act attempts to make the previous subsections retrospectively declaratory of the law, thereby attempting to deal with the rights to parties now in litigation in the matter of the Merchants' Life Association.

I desire to refer to the following precedents:—

Act passed by the Legislative Assembly of Prince Edward Island, entitled: 'An Act to amend the Land Purchase Act, 1875.'

Reserved Bill recommendation of Hon. R. W. Scott, K.C., Acting Minister of Justice, dated 18th June, 1876, 'That the Act do not receive the assent of the Governor General in Council. Adopted.'

Extract from recommendation: 'Without giving weight or consideration to any great extent to the allegations in the petition which are unsupported by actual proof, he is of opinion that the reserved Bill was retrospective in its effects, that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may yet form the subject of litigation, and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.' (See Dominion and Prov. Legislation, compiled by W. E. Hodgins, p. 1176).

Ontario Act, passed 4th March, 1881, entitled: 'An Act for protecting public interests in rivers, streams and creeks,' disallowed by proclamation 19th May, 1881, on report of Hon. James MacDonald, K.C., Minister of Justice, dated 17th May, 1881.

Extract from report: 'The effect of the Act now under consideration must be to reverse the decision in this suit.' (Maclaren v. Caldwell). 'I think the power of the

local Legislature to take away the rights of one man and vest them in another, as is done by this Act, is exceedingly doubtful, but assuming that such right does in strictness exist, I think it devolves on this government to see that such power is not exercised in flagrant violation of private rights and natural justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the Act over-rides a decision of a court of competent jurisdiction by declaring retrospectively that the law always was and is different from that laid down by the court.' Reported, Dom. and Prov. Leg., Hodgins, p. 177.

See correspondence *re* application of Toronto Coal Company to disallow Nova Scotia Mining Act, Dom. & Prov. Leg. Hodgins, p. 616, Leg. Power in Canada, Lefroy p. 199.

A legislature has no power to declare what was the intention of the statute passed at a former session.

Governor *v.* Porter 5 Humph. 165.

Postmaster Gen. *v.* Early 12 Wheat. 148.

Greenough *v.* Greenough 11 Pa. St. 489.

Reiser *v.* Toll Association 39 Pa. St. 137.

Sutherland Construction Statutes, sections 200, 201.

Potter's Dwaris on Statutes (Ed. 1875), p. 68.

Potter's Dwaris p. 68. Note 1.—A declaratory statute, is sometimes intended to declare the meaning and intent of a pre-existing statute. This kind of legislation is apt to create a conflict between the proper functions of the legislative and judicial departments of the government; because such statutes are, necessarily, to a certain extent, retrospective. It assumes the exercise of judicial power, in determining what the law was before the declaratory statute was passed. In this way they exceed their power, and invade the domain of judicial authority. This kind of legislation sometimes happens after the courts in the due exercise of their legitimate authority, as interpreters of the law, have declared the meaning and intent of the statute to be otherwise than such as the new statute declares. Without referring to other cases a single instance may suffice. The legislature of New York in 1853 passed an Act in relation to the liability of certain insurance companies to taxation, the construction of which was a question litigated and determined in the courts. In 1855, the legislature enacted a law declaring the intention of the Act of 1853, to be different from the intent as declared by the courts; such judicial decisions had been pronounced and were pending on appeal to the highest court, at the time of the enactment of the declaratory law. The Court of Appeals declared as follows: "All the judgments of the Supreme Court now under review, were rendered at the special term before the enactment of this statute. The cases since that time have been pending on appeal before the general term, and in this court; and were so pending when the statute was enacted. As regards these cases, the mandate of the Legislature, if it has any application, must be regarded as addressed to the appellate tribunals. We habitually look with great respect upon all acts of the Legislature, and never refuse to give them effect, except where, upon the fullest consideration, we find that they conflict with the constitution. The Act in question, considered as a persuasive argument for a particular construction of the statute of 1853, loses much of its weight from the consideration that the legislative bodies had been renewed in the interval between the two enactments, and that but a few of the members of the Legislature of 1853 sat in that of 1855. But if that were otherwise, we should feel constrained to rely upon the language of the statute which we are called upon to interpret, rather than any personal assurance as to the intention of its members. The Acts of the Legislature do not rest in any respect upon oral tradition. They are committed to writing, and it is by the written language that their sense is to be ascertained. As an authoritative mandate in favour of the construction claimed by the insurance company we cannot accord to it any force whatever. In the division of power among the great departments of the government, the duty of ex-

pounding written laws, has been committed to the judiciary. The Legislature has no judicial power; and cannot upon any pretence interpose its authority respecting questions of interpretation depending in the courts." *People v. Board of Supervisors of New York*, 16 N.Y.R. 431, 2; *Dash v. Van Kleeck*, 7 John R. 477. Nor have the Legislature the power to make the opinion of the Attorney General binding upon a contractor, as agent of the state prison, upon a contract previously made. *Young v. Beardsley*, 11 Paige 93.

Note 2—Nor would a statute declaratory of the common law, retroact upon past controversies, or reverse decisions which the courts in the exercise of their undoubted authority have made. *Cooley on Const. Lim.* 94. This would be a like exercise of judicial power, which if tolerated, might constitute the Legislature a court of review in all cases where disappointed partisans could obtain a hearing, after being dissatisfied with the rulings of the court. *Id.*

The Legislature may within their legitimate powers, declare what the law shall be in future, but to declare what the law is, or has been, in the province of the judiciary. See *Greenough v. Greenough*, 11 Penn. St. R. 494, and *Reiser v. Tell Association* 39 *Id.* 137. In the latter case, the courts say in relation to such a declaratory act, "It is the interpretation by one Legislature of a written statute by another, and therefore an adjudication of private rights that have arisen under it. And yet the former Legislature said nothing like this, and nothing from which it can be inferred. The Legislatures have no such authority over us, to change the laws of language. If given languages does not express a given meaning, they may give us other language that does; but this will not change the meaning of former language. In the very nature of language this is impossible. It is with, and by virtue of the new expressions, that we get the new meaning, and the meaning of the law is the law itself, and the law can be no older than the effectual expression of it."

Note 3.—A declaratory law, founded upon a mistaken opinion of the Legislature, though inoperative as to the past, may operate in the future. *Postmaster General v. Early*, 12 Wheat 148. A declaration of the Legislature as to what they intended for the time in the past by a law, does not make the law what they intended it, if they are in error. It only affects it in the future; the past law is to be determined by the judiciary; but it is the duty of the courts to give to a construing Act its intended practical operation, as far as is possible. *Bassett v. U. S. Nott & Huntington* R. 448. In this country, where the legislative power is limited, declaratory laws, so far as they operate on vested rights, cannot change the rule of construction as to a pre-existing law. *Salters v. Tobias* 3 Paige 388."

It is submitted that the whole statute in question is void in that the provisions as to valuing unmaturing policies tend to impair contracts, and are therefore beyond the provincial legislative power, and do not come within the provisions of section 92 of the British North America Act, not being covered either by subsections 13 or 16, and that the policy of the British North America Act is that the powers given by section 90 were intended to be exercised in restraint of this species of legislation.

It is further submitted that the provisions relating to compulsory winding up infringe upon the Dominion parliament section 91 (21) British North America Act.

Reference may be made to *Attorney General of Canada v. Attorney General of Ontario* 20 O. R. p. 245. ((19 A. R. 31, 23 S. C. 458). "The power of disallowance is one which may operate both in the plane of political expediency and in that of judicial capacity. Its exercise in these days is largely confined to the former," per Boyd C.

Bank of Toronto v. Lamb 12 App. Cases at 587.

Leprohon v. Ottawa 2 O. R. 522.

Re Thrasher 1 Bri. Col. Rpts. 153 (see post).

It is submitted also that weight should be given in favour of the application for disallowance, in that the Act was improperly hurried through the Legislature at the end of the session, without notice to parties interested in pending litigation, and at the

instance of a government official who improperly concealed from the local government the fact that litigation was pending which might be affected thereby.

- ✓ Sewell v. British Columbia Towing Co.
The "Thrasher" Case 1 B. C. Reports 153.
- 3 Cartwright's Cases on British North America Act 320.
- 4 Can. L. T. 53.

HELD *per* BEGGIE, C. J. CREASE & YOUNG, J. J.

The appointment of the days on which the court should sit for reviewing *nisi prius* decisions, &c., is a matter of procedure and of purely judicial cognizance, and is not within the power of the local Legislature either to fix by positive enactment or to hand over to be fixed by any other person or persons, but belongs to the court itself.

The power conferred by section 92 British North America Act, 1867, is a legislative power and does not enable a local Legislature to interfere with functions essentially belonging to the judiciary or the executive.

H. T. BECK,
Counsel for the Petitioner.

(Approved 13 March, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 10th March, 1902.

To His Excellency the Governor General in Council:

There has been presented to the undersigned a petition of the corporation of the city of Toronto, addressed to Your Excellency in Council, praying upon grounds therein urged, for the disallowance of the Ontario statute, 1 Edward VII., chapter 41, intituled: "An Act respecting the University of Toronto and University College." Following the usual practice in such cases, the undersigned recommends that a copy of the petition herewith submitted, and of this report, if approved, be referred to the Lieutenant Governor of Ontario, for the observations of his government. It may be pointed out that the time for disallowance will expire on 25th April next, and that the reply of the provincial government should be sent forward as soon as convenient.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Petition from the Corporation of the City of Toronto

To His Excellency the Governor General of Canada, in Council:

The humble petition of the corporation of the city of Toronto, and of the inhabitants thereof,

HUMBLY SHOWETH AS FOLLOWS:

1. Your petitioners are advised by counsel learned in the law that the property in the city of Toronto known as "Russell Square," and recently occupied by Upper Canada College, on King street, in the city of Toronto, bounded by King, John, Adelaide and Simcoe streets, is the property held by His Majesty subject to an easement in favour of the inhabitants of the city of Toronto as a public square.

2. By section 6 of an Act passed by the Legislature of the province of Ontario in the first year of the reign of His Majesty, and chaptered 41, the said property was vested in certain trustees in the said Act made a body corporate for the purposes of

the University and University College, subject to the provisions of the said Act. The said section reads as follows:—

“6. All property and effects real and personal now vested in the Crown in trust for the purposes of the University and University College, and all other property and effects now owned by or held in trust for the University or University College, or either of them, or to which the University or University College is entitled, and the property in the city of Toronto forming the block of land lying between King, Adelaide, Simcoe and John streets, and being the former site of Upper Canada College, shall be, and they are hereby vested in the trustees for the purposes of the University and University College, subject to the provisions of this Act.”

3. The mayor and corporation of the said city have been advised by counsel for the said city that, notwithstanding the said Act, by the true construction thereof, the inhabitants of the said city are still lawfully entitled to the benefit of and easements over the said Russell Square as a public square.

4. The said square was in the year 1798 dedicated by the Crown as a public square upon the plan of the town of York, as then laid out upon the Crown lands, and the name and designation of Russell Square appeared on the said plan upon the said square.

5. In and by the same plan the lots surrounding the said square were described as fronting upon and bounded by posts planted upon the limits of the said Russell Square. The said plan was duly published as the plan of the second or westerly extension of the town of York, and the said lots were granted and patented as so fronting on the said square; and the remaining lots shown upon the said plan were sold and granted according to the said plan and upon the faith thereof.

6. After the publication of the said plan and the sale and granting of the lots laid out thereon, namely, in the year 1819 the Governor in Council caused the portion of the said square not required for streets, to be patented to trustees under the name and designation of Russell Square, upon trust to observe such directions and to consent to and allow such dispositions as the Governor in Council should, from time to time order to make, pursuant to the purposes for which the said Russell Square was so originally reserved.

7. By direction of the Lieutenant Governor in Council pursuant to the said trust, and by and with the consent of the inhabitants of the said town of York, in the year 1829, the buildings of the Royal Grammar School (known as Upper Canada College) were directed to be and were placed on a part of the said Russell Square “for the greater convenience of the youth of the said town of York,” and the remainder of the said square has, by like consent, been used as a play-ground for the youth of the town, and as open ornamental grounds, maintained in connection therewith, and as an ornament of the said town and city, and open to the view and accessible to the inhabitants thereof.

8. The said square was not then or at any time vested in the corporation of the said college; but the regulation and use thereof, and the control and disposition thereof, always continued subject to the order and disposition of the Governor in Council pursuant to the said trust, and have always been subject to the said easement in favour of the inhabitants of the said town and city.

9. It was afterwards enacted by Act of the Parliament of Canada (12 Victoria, cap. 35, section 33; now revised statutes Ontario, 1887, c. 181, s. 20) that in any city, town or village in Upper Canada which had been surveyed by the authority of the executive government, all allowances for roads of such city, town or village, should be and were thereby declared to be public highways and commons; and that the posts or ornaments planted to designate the same should be the true unalterable boundaries of such streets and commons.

10. It was enacted also by the said Parliament in the same session (now sections 557 and 637 of the Municipal Act, 1897) that the municipality of each village, town and city should have power and authority to pass by-laws for opening, improving and preserving such highways and squares, and for preventing the encumbering, injuring or fouling of the same.

11. Under an Act of the Legislature of the province in that behalf the said Upper Canada College has been removed from the said square to a new site outside of the limits of the said city, with a view to the said college becoming an institution of provincial more than local use and benefit; and the said Russell Square is now vacant and is no longer needed as a site for the said college for the use of the youth of the said city.

12. The mayor and council of the city of Toronto are advised by counsel for the said city that the inhabitants of the said city are entitled to have the said square applied for the benefit of the said inhabitants as a public square, pursuant to such by-laws as the said mayor and council may lawfully make in that behalf under the powers to them given in that behalf by the municipal Act.

13. The said mayor and council are advised by counsel aforesaid that at the time of the passing of the Act known as the Confederation Act, the said lands, as to the power and disposition over the same reserved to the Governor in Council, were lands held in trust by the province of Canada, and in which others than the province had an interest; and that in and by the Confederation Act the same were vested in Her late Majesty Queen Victoria on behalf of the province of Ontario, subject to the said trusts for, and interests of, the inhabitants of the said city of Toronto.

14. The said Act of the Legislature of Ontario, 1 Edward VII., chapter 41, may be sought to be acted on, in breach of the said trusts and may injuriously affect the rights and interests of a large number of Her Majesty's subjects without their consent, contrary to the true intent of the said Confederation Act and to Revised Statutes of Canada, 1897, chapter 181, section 20, and to the Municipal Act, sections 557 and 637.

15. Since the passing of the said last mentioned Act, the trustees of the University have sold, or have attempted to sell, part of the land formerly belonging to Russell Square, and your petitioners submit that the sixth section of the said Act should be disallowed at the earliest possible moment, so that other persons may not be induced to buy any of the said lands, believing the trustees had a right to sell, when, as in fact your petitioners submit, no title was vested in the said trustees and their title is defective.

16. The said last mentioned Act was assented to upon the 15th day of April, 1901, and your petitioners ask that the said section be disallowed before the expiration of one year from the said date.

Your petitioners therefore humbly pray:

That Your Excellency in Council will be graciously pleased to take into consideration the above matters, and to disallow the said Act passed by the Legislature of the province of Ontario in the first year of the reign of His Majesty King Edward the Seventh and chaptered 41, or so much of it, as vests in the trustees of the University of Toronto the land known as Russell Square, and described in the first paragraph of this petition. And your petitioners as in duty bound will ever pray.

Signed on behalf of the corporation of the city of Toronto.

OLIVER A. HOWLAND,

[L.S.]

Mayor.

W. A. LITTLEJOHN,

City Clerk.

R. T. COADY,

City Treasurer.

2 EDWARD VII, 1902

5TH SESSION, 9TH LEGISLATURE.

(Approved 12 December, 1902)

DEPARTMENT OF JUSTICE, November 24th, 1902.

These Acts were received by the Secretary of State for Canada on 21st March last.

A petition has been presented to Your Excellency in Council on behalf of Edward Spencer Jenison and others, seeking disallowance of chapter 42, intituled "An Act respecting the Town of Fort William, 1902." Copy of the petition has been communicated to the Government of Ontario, and the undersigned has heard representations on behalf of the petitioners urging the disallowance of the Act. No reply to the allegations of the petition has been received from Ontario, but the undersigned is informed that at present the petitioners are not desirous of having the matter further considered. This statute is, therefore, reserved for further report if necessary.

Chapter 101. "An Act to incorporate 'The Huronian Company, Limited.'"

Section 5, paragraph (e), purports to authorize the company to construct, acquire, navigate and employ steam and other vessels for the purpose of transporting the produce of its mills, mines and works to any place in Canada or elsewhere. The authority of a provincial Legislature in such matters is defined and limited by the 10th enumeration of section 92 of the British North America Act, which only confers exclusive authority upon a provincial Legislature with regard to local works and undertakings other than

(a) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;

(b) Lines of steam ships between the province and any British or foreign country;

(c) Such works as, although wholly situate within the province, or before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.

The authority assumed by paragraph (e) of section 5 to navigate and employ steam vessels for the purpose of transporting goods to any place in Canada beyond the limits of Ontario or elsewhere seems, therefore, to be in excess of that which is conferred by the Act of Union, and the undersigned recommends a suggestion to the Lieutenant Governor that the statute be amended at the next session of the Legislature by expressly limiting the powers of the company to provincial objects.

Chapter 103. "An Act to authorize 'The Royal Trust Company to do business in the province of Ontario.'"

This Act recites that the Royal Trust Company has by its petition represented that it was incorporated by an Act of the Legislature of the province of Quebec, 55 and 56 Victoria, chapter 79, which Act has been since several times amended by the same Legislature, and that the company has prayed for an Act authorizing it to transact only the business of a trust company in the province of Ontario in conformity to the public general law thereof. It is therefore enacted among other things, that after giving security to the satisfaction of the Lieutenant Governor of Ontario in Council in a sum of not less than \$200, the company shall upon filing with the registrar appointed under the Loan Corporations Act the power of attorney required by section 108 of the last-mentioned Act, and upon being registered under the said Act, be authorized and empowered to carry on and exercise in the province of Ontario, the business of a trust company with the powers set forth in the schedule to the Ontario Trust Companies Act.

The undersigned observes that a provincial Legislature has exclusive authority with regard to the incorporation of companies with provincial objects, and it was

doubtless in the execution of this power that the Royal Trust Company was incorporated as recited in the preamble by the Legislature of Quebec. If, therefore, the company exists for the provincial objects of Quebec, it is in the opinion of the undersigned questionable whether the Legislature of Ontario has any authority to extend these, or confer powers extra-provincial as to Quebec, or in any wise interfere with the constitution of the company. It has been held by the highest authority that the Dominion Parliament alone has jurisdiction to incorporate a company with objects extending to more than one province, and it may, therefore, be that where an existing provincial company desires to extend its franchise to other provinces, it should come to Parliament for the necessary amendment of its constitution.

For these and other like reasons the undersigned questions the authority of Ontario to enact the statute under consideration, but as such objections may be conveniently determined by the courts, and as there is perhaps room consistently with what has been decided, to uphold this Act, the undersigned does not recommend disallowance. He, however, submits these remarks for the consideration of the Government of Ontario and of the company concerned.

The remaining statutes may be left to their operation without comment.

C. FITZPATRICK,
Minister of Justice.

(Approved 20 May, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 30th April, 1902.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a petition addressed to Your Excellency in Council from Edward Spencer Jenison and others, dated 23rd instant, 1902, praying for the disallowance of an Act of the Legislative Assembly of the province of Ontario, passed at the last session thereof, 2 Edward VII., chapter 49, intituled: "An Act respecting the Town of Fort William, 1902."

The undersigned is informed by the solicitor of the petitioners that he has forwarded a copy of this petition to the Attorney General of Ontario.

The undersigned is also informed that the consideration of the said petition is urgent owing to works of the petitioners which are in contemplation and which have to be executed within a limited time.

The undersigned recommends, therefore, that the Lieutenant Governor of Ontario be requested to submit for the information of Your Excellency's Government such observations as he may be advised in reply to the said petition.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

Petition from E. S. Jenison and others to the Governor General in Council

The Right Honourable the Earl of Minto, G.C.M.G., Governor General of Canada, in Council.

The petition of Edward Spencer Jenison, Shea Smith, George H. Jenkins and David Spencer Wegg all of the city of Chicago in the state of Illinois, one of the United States of America, humbly sheweth:

1. By an Act of the Legislative Assembly of the province of Ontario passed on the 13th day of April, 1897, and being chapter 106 of the statutes, 60 Victoria, authority

was given to your petitioner Edward Spencer Jenison to erect a dam or weir in the Kaministiquia river in the district of Thunder bay at the head of the falls or rapids in the said river known as Ecarte Falls, to such height as might be necessary in order to raise the level of the water in the said river to the height of eight feet above its low water mark or level. The site for the said dam is at a distance of about 16 miles in a direct line from the town of Fort William in the said district.

2. By the same Act authority was similarly given to the said Edward Spencer Jenison at a point above the said dam to be so erected, to divert from the channel of the said river such part of the waters thereof as might from time to time exceed 4,000 cubic feet, passing the said point per minute, and to convey and conduct by artificial means the waters so diverted across certain lands in the said Act mentioned, and to return such water to the natural channel of the said river at a point below the said rapids, and below a high natural fall in the said river known as the Kakebeka falls.

3. By the said statute other valuable powers and authority were further conferred upon the said Jenison enabling him to lower the bed of the said river at its source, to erect and maintain storage reservoirs at the head waters of the said river and of its principal tributary, to flood and keep submerged certain ungranted lands of the Crown, to transmit and convey electrical power along public highways in the said district and, under certain circumstances and restrictions in the said statute described, to expropriate and acquire from the owners thereof certain lands in the said Act mentioned.

4. Prior to the passing of the said statute the said Edward Spencer Jenison had become by purchase, owner of a valuable undeveloped water privilege upon the said Kaministiquia river at or adjoining the said Ecarte rapids and for the purpose of improving and rendering more valuable the said water privilege, the said Jenison had by his petition prayed the said Legislative Assembly to pass the said Acts, as conducive to the public good and as proper and just under all the circumstances of the case.

5. The said Jenison had also prior to the passing of the said Act on or about the 21st day of April, 1896, entered into an agreement and contract with the Commissioner of Crown Lands for the province of Ontario, representing the Government of the said province, whereby license to use or flood certain ungranted lands of the Crown in the said agreement described was granted to the said Jenison upon the terms and conditions in the said contract or agreement set forth.

6. Prior to the making of the said agreement or contract the said Jenison at the instance of the Government of the province of Ontario, had obtained a report to be made by Mr. Hume Blake Proudfoot, O.L.S., in respect of the lands which would or might be flooded or otherwise affected by the proposed works, and the said Proudfoot in order so to report had made a personal survey and examination of the shores and levels of the lakes and rivers from which the waters of the Kaministiquia river flow--the expenses of such survey, examination and report by the said Proudfoot amounting to \$600 were paid by the said Jenison.

7. The said Jenison, who is himself a hydraulic and civil engineer, had also, from the month of October, 1895, devoted the whole of his time and a very considerable outlay of money to personal surveys and examinations of the said Kaministiquia river and the adjacent country, to the employing and superintending the work of other engineers, surveyors and assistants to the same end, to journeys and negotiations, with a view to acquiring the lands and rights necessary to the carrying out of his enterprise, and to the purchase, by private contract with the owners, of such of the said lands and rights as he was able so to acquire, and prior to his application to the Legislature for the passing of the said Act, there had been actually expended and paid out in connection with in and about the said undertaking a sum exceeding \$10,000 in money.

8. The moneys so expended had been furnished by your petitioners Jenison, Smith and Jenkins under an agreement among themselves, and without any assistance up

to the time of the passing of the said Act from your petitioner Wegg, but upon the passing of the said Act the matter of the said enterprise and of the rights, privileges and franchises conferred by the said statute was laid before the said Wegg and after inquiry and investigation on his part, an agreement was finally entered into on or about the 28th day of September, 1897, to which your petitioners above named alone are parties, and by which upon the terms as among themselves in the said agreement set out, your petitioners undertook to co-operate with each other in the effort to carry the said enterprise to a successful issue as a commercial undertaking.

9. It was essential to the carrying out of the scheme contemplated by the said statute that a strip of land across the mining location of lot No. 10X in the township of Oliver mentioned in the said statute, sufficient in width to admit the passage of the said diverted waters, should be acquired by your petitioners.

10. The said lot was owned by the Kakabeka Falls Land and Electric Company, Limited, a company which had been incorporated by letters patent of the province of Ontario dated the 7th day of March, 1890, and which company refused to part with any of its said land to the said Jenison, except upon terms altogether exorbitant in character.

11. Thereupon arbitration proceedings under the provisions of the said statute were entered upon between the said Jenison and the said company. Such proceedings began on the 11th day of October, 1897, and after a prolonged contest involving the examination and hearing of a very large number of witnesses, many of them giving scientific or expert testimony, the said proceedings resulted in an award dated the 24th day of June, 1898, by which it was ordered and determined that the said Jenison was entitled to enter upon, take possession of, acquire, hold, use and expropriate a strip of land in the said award described being 400 feet in width across the said lot No. 10, paying therefor by way of compensation and damages the sum of \$1,390.

12. The said Jenison was further required by the said award to pay the arbitrators' and stenographers' fees in connection with the said arbitration proceedings and his own costs of the said proceedings, and the said fees have been paid, and the amount so awarded to the said company (\$1,390) has been paid to its solicitors.

13. The said company contested the rulings of the said arbitrator in the courts of Ontario and litigated such contestation until the Court of Appeal for Ontario pronounced judgment sustaining the course taken by the said arbitrator in arriving at his said award.

14. During the latter part of the year 1898 proposals for the establishment of a system or systems of water-works and for the furnishing of a supply of water for domestic and municipal purposes to the inhabitants of the towns of Port Arthur and Fort William began to be considered and discussed among citizens of the said towns and on the 2nd day of January, 1899, by-laws were submitted to the vote of the electors of the said towns respectively, authorizing the mayor and town clerk of each municipality to enter into a contract with the said Jenison for the supply of water as above mentioned and for the supply of electric power or energy to operate the lighting and heating systems of the said respective municipal corporations and an electric railway which connects the two towns.

15. The said by-laws each received the assent of the electors by large majorities and pursuant thereto a formal contract was, in the case of the town of Fort William, executed by the said Jenison and by the mayor and clerk of the said town.

16. The proposal so to supply water as well as electric power to the said towns necessitated the conducting of the diverted waters of the Kaministiquia river to a reservoir much nearer to the said towns than the site of the said Kakabeka Falls and of the water power at or above the same acquired by the said Jenison as above mentioned and the greater part of the year 1898 was occupied in surveys and examinations of the intervening ground, to make certain that such proposal was practicable and in the necessary negotiations with the municipal authorities of the said towns in and about the passing of the said by-laws and the making of the said contracts.

17. At the session of the Legislative Assembly of the province of Ontario holden in the year 1899 an Act—62 Victoria, Chapter 120—was passed upon the further petition of the said Jenison to extend the provisions of the former statute 60 Victoria, chapter 106.

18. By the said statute, 62 Victoria, chapter 120, it is recited that if the waters to be as above mentioned diverted from the Kaministiquia river are conducted to a point in the township of McIntyre in the district of Thunder Bay near the said towns of Port Arthur and Fort William, they can there be economically utilized to provide a gravitation system of water supply for the said towns, and can by reason of the greater head there obtainable be also utilized to greater advantage for the production of power.

19. By the said statute authority is given so to convey the said diverted waters by means of a trench canal or otherwise as in the said statute set out, over intervening lands to the said towns of Fort William and Port Arthur and so to Thunder Bay, Lake Superior.

20. By the said statute other valuable powers and authority were further conferred upon the said Jenison, enabling him to intercept and divert intervening streams and watercourses, to construct and maintain reservoirs and settling basins and to expropriate if necessary such lands as might be requisite for the reasonable and economical construction, maintenance and operation of the works proposed.

21. By the said statute the said by-laws of the towns of Fort William and Port Arthur were validated and confirmed, and power conferred upon the said municipalities to enter into the agreement therein referred to.

22. It is further provided by the said statute that the construction of the said works shall be commenced within a period of six months from the passing of the said Act and completed within three years from the time fixed as aforesaid for commencement, or within such further time as the Lieutenant Governor in Council might grant.

23. Within the said period of six months from the passing of the Act last mentioned the construction of the said works was actually commenced.

24. While the statute last mentioned was under consideration by the Private Bills Committee of the Legislative Assembly the propriety of conferring upon the said Jenison the powers of expropriation therein contained was questioned, and thereupon the said Jenison promised and undertook that in the event of such powers being conferred upon him by the Legislature, they should not be exercised unless in the last resort, and as a means of acquiring lands necessary for the said works which it might be impossible to purchase at any reasonable price by private contract.

25. In carrying out the said promise and understanding many journeys were necessarily undertaken and great expense incurred and much time occupied in the making of personal applications to land owners in different parts of Ontario and elsewhere to sell such lands, and in negotiations for such purpose, but ultimately during the years 1899, 1900 and 1901 all the lands requisite for the construction, maintenance and operation of the said works were acquired either by purchase or private sale, or by means of proceedings for expropriation under the powers in the said statute contained.

26. Much time was also occupied during the said years 1899, 1900 and 1901 and great expense incurred in further surveys and examinations by the said Jenison personally and by other engineers, surveyors and assistants working with him and under his employment and supervision in ascertaining and determining the least expensive and most efficient route by which to conduct the waters to be diverted as above described to the reservoir near the said towns where they were to be utilized as mentioned in the said Act.

27. During the summer of the year 1901 a force of about thirty men, with all necessary machinery, horses and plant were engaged in clearing lands preparatory to the construction of the said trench or canal until a strike took place among the said

men, owing to dissatisfaction with the rate of wages they were receiving, and thereupon in consequence of the said difficulty, together with the refusal of the municipal authorities of the said town of Port Arthur to execute the contract above referred to, the said work of construction was suspended and has not since been resumed, although the intention to continue the same and fully to complete the said undertaking has never been in any way abandoned.

28. During the session of the Legislative Assembly of Ontario, in the year 1901, a statute was passed (1 Edward VII., c. 52, sec. 3) empowering the municipal council of the said town of Fort William to extend the time for the completion of the works referred to in the contract entered into by that municipality as above set forth to such time as the municipal council of the said town might determine, but the said council has refused to agree to any such extension.

29. The contract between the said Jenison and the town of Port Arthur has never been executed by the representatives of the said town, though every effort has been made by the said Jenison to procure the said contract to be so executed.

30. During the said session of the Legislative Assembly of Ontario, in the year 1901, a further statute was passed (1 Edward VII., c. 65, sec. 8) by which the municipal council of the said town of Port Arthur was empowered, on signing and delivering the agreement above referred to, to extend the time for the completion of the works therein specified to such date not later than 1st January, 1903, as the said municipal council might think proper.

31. The whole of the work of preliminary surveys necessary for the construction and operation of the said works has been completed, and all the requisite lands, right and easements have been acquired, and all the necessary work of examinations, gaugings and measurements to determine the quantity and characteristics of the water-flow in the said river has been done, but as the actual execution and completion of the construction of the said works would necessarily involve the expenditure of a large amount of money, your petitioners were desirous of obtaining capital for that purpose upon the security of the said property itself, and to that end entered into negotiations with men of large means, and on the 15th day of March, 1902, finally concluded such negotiations by which the supply of all moneys required for the completion of the said works was secured.

32. Your petitioners have, in and about the premises, actually laid out and expended a sum of more than \$90,000 of their own moneys.

33. During the session of the Legislative Assembly of Ontario, in the year 1902, a statute has been passed (2 Edward VII., chapter 49) by section 23 of which statute all and every Act or Acts of the said Legislature conferring any right or privilege upon the said Edward Spencer Jenison is and are repealed.

34. It was the intention of your petitioners but for the passing of the said repealing Act to have proceeded actively during the coming summer with the construction of the works above described, and there would be no difficulty in completing the said works by the first day of October next, so as to have ready and available for use hydraulic capacity for at least ten thousand horse-power as required by the statute, 62 Victoria, chapter 120, section 16.

35. The said statute, 2 Edward VII., chapter 49, empowers the town of Fort William to develop at or near the Kakabeka Falls on the said Kaministiquia river, electrical energy to the extent of 10,000 horse-power, and to convey the said electrical power or energy to the said town, and to lease, sell and otherwise deal with such electrical power or energy with any person desiring same upon such terms as such corporation deems meet.

36. By section 25 of the said statute an agreement bearing date the 11th day of March, 1902, between the solicitors for the said town and the said The Kakabeka Falls Land and Electric Company, Limited, which is set forth in a schedule to the said Act, is declared to be valid and binding upon the said corporation and the said company.

37. The said Act was passed upon the petition of the said town of Fort William, and after advertisement of the application for the said Act in the *Ontario Gazette* and in a newspaper published in the said town of Fort William, but neither the said advertisement nor the said petition contain any reference to the statutes conferring the powers above mentioned upon the said Jenison, nor any intimation that the rights or property of your petitioners were intended to be taken away by the said proposed legislation.

38. The said statute as introduced and as read a first time in the Legislative Assembly aforesaid contained no reference to the said statutes conferring the powers aforesaid upon the said Jenison, and did not take away the rights or property of your petitioners secured to them by the said statutes.

39. In the petition for the said statute the statement is made that the contract between the said town of Fort William and the said Jenison referred to in the said Act of 62 Victoria, chapter 120, expired on the first day of January, 1902, by reason of the default of the said Jenison, and on similar statements being made before the said Private Bills Committee by those promoting the passage of the said Act (2 Edward VII chapter 49), your petitioner Jenison offered to deposit with the Treasurer of the province of Ontario, within ninety days from the passage of the said Act, the sum of \$50,000 as security that the said works would be gone on with and prosecuted to the satisfaction of the Lieutenant Governor in Council, and clauses to that effect were framed to be inserted in the said Act, and the said Jenison understood that the said Committee then determined to have the operation of the said Act suspended until opportunity was afforded to make deposit as aforesaid of the said sum.

40. The said statute again came before the said Private Bills Committee for consideration on the twelfth day of March, 1902, and on that day the provision above referred to repealing all Acts by which any right or privilege had been conferred upon the said Jenison was inserted in the said statute by the said committee.

41. The said statute received its third reading by the said Legislative Assembly on the 15th day of March, 1902, and was finally assented to on the 17th day of March, 1902.

42. Your petitioner Jenison was in attendance before the said Private Bills Committee when the said statute was under consideration, and was present at the meeting of the said committee on the twelfth day of March, 1902, but although it had been a few days before intimated to him that the rights and powers conferred upon him by the said Acts of the Legislature now repealed might be interfered with or restricted by the said proposed legislation, he was not aware until the thirteenth day of March, 1902, after the said statute had been reported by the said Private Bills Committee and had received its second reading in the said Legislative Assembly, that it actually repealed the said former Acts of the said Legislature, and your petitioners other than the said Jenison had no notice or intimation whatever of the repealing provision of the said statute, until after the same had been finally passed by the said Legislature and the assent of the Lieutenant Governor had been given thereto.

43. By the said statute as finally passed, the right to create by storage dams or other necessary works, reservoirs at the head of the Shebandowan river and at the head of the Kaministiquia river is conferred upon the corporation of the town of Fort William, and the rights and privileges so conferred upon the said town are declared to supersede and have priority over those of the said Jenison.

44. By the agreement between the said town and the said Kakabeka Falls Land and Electric Company, Limited, printed as Schedule "C" to the said Act, the said town may transfer and assign to the said company its rights, properties, powers and privileges under the said legislation.

45. The said Act purports to provide compensation to the said Jenison for a small portion of the lands acquired as aforesaid for the purposes of the said undertaking, but the compensation so provided for is altogether inadequate and illusory, and the

said statute affords to your petitioners no real compensation whatever, but merely a pretended and wholly fictitious compensation for the property and rights by the said Act taken from them.

Your petitioners therefore humbly submit that the above mentioned provisions of the Ontario statute, 2 Edward VII., chapter 49, are unjust and inequitable, and would greatly prejudice and injure your petitioners, and that the said provisions of the Act aforesaid ought not to be allowed to become law for the following among other reasons:—

1. Because the said Act injuriously affects your petitioners in their property and existing rights, and your petitioners had no sufficient or reasonable notice and no public notice was given of the intention to pass such an Act, or that any legislation was intended materially affecting the interests of your petitioners.

2. Because the real object and effect of the said Act is to take from your petitioners their property rights and franchises and to transfer the same through medium of the said municipal corporation of Fort William to the business rivals and competitors of your petitioners, and no protection of the just rights and interests of your petitioners is contained in the said Act.

3. Because the rights and privileges conferred by the said repealed statutes upon your petitioner Jenison were lawfully granted to him by the said Legislative Assembly, and were approved by His Excellency in Council, and upon the faith thereof a very large amount of money and much time and labour have been honestly expended by your petitioners and it would be wholly contrary to good faith and to the infallible justice of the Crown that your petitioners should be deprived of their said property and rights without consideration or compensation.

4. Because the said Act is contrary to the provisions of Magna Charta which declares that no man shall be disseized or put out of his freehold franchise or liberties, nor be outlawed or exiled or any otherwise destroyed, unless he be brought in to answer and prejudged of the same by due course of law.

5. Because the said legislation is illegal and unconstitutional and is a violation of the rights of property, and is unjust and not expedient in the public interest.

6. Because the injustice of the said Act to your petitioners is so flagrant that the consequences in deterring capitalists from investing money in any Canadian enterprise would make it unwise and unsafe in the public interest to permit such legislation to go into operation.

7. Because the said Act is unconstitutional, in that in detriment of vested rights, it assumes to deprive your petitioners of extensive and important privileges and franchises, without providing any compensation or any adequate compensation therefor.

Wherefore your petitioners humbly pray that Your Excellency in Council will graciously be pleased to take the premises into your favourable consideration, and to disallow the said Act or so much of the provisions of the same as repeal the said former Acts of the Legislative Assembly aforesaid, and destroy the property, rights and franchises of your petitioners:

And as in duty bound your petitioners will ever humbly pray.

EDWARD SPENCER JENISON,

SHEA SMITH,

GEO. H. JENKINS,

D. S. WEGG.

Dated, the twenty-third day of April, 1902.

3 EDWARD VII, 1903

1ST SESSION, 10TH LEGISLATURE

(Approved 23 March, 1904)

DEPARTMENT OF JUSTICE, January 8th, 1904.

3 Edward VII—received by the Secretary of State for Canada on 31st July, 1903.

These Acts may be left to their operation without comment, except as to chapter 16, intituled: "An Act to amend the Loan Corporations Act."

The Loan Corporations Act, as amended previously to the statute above mentioned, provided a penalty against any person, society or corporation assuming or using a name which includes any of the words *loan, mortgage, trusts, investment or guarantee* in conjunction or connection with any of the words *corporation, association or society*, or in conjunction or in connection with any similar collective term, and it is now by section 9 of the present Act proposed to extend this penalty, so as to apply to any person, society or corporation assuming or using any similar name, or any name or combination of names which is likely to deceive or mislead the public.

The undersigned has received correspondence objecting to the last amendment, because of the difficulty of ascertaining what is a similar name within the meaning of the statute, and because the amendment relates to criminal law or the regulation of trade and commerce, and Your Excellency is asked for these reasons to disallow the Act.

The undersigned considers, however, although the Act may not be very free from objection to one or other of the grounds stated, that it is open for the courts, not only to intrepert it, but to give effect to any objection touching its validity, and he, therefore, does not think that this Act, which contains a number of other amendments, to which no exception is taken, should be disallowed for the reasons urged.

And also chapter 19, intituled: "The Consolidated Municipal Act, 1903."

As to which the undersigned observes that by section 534 the municipal councils are authorized to make by-laws for certain purposes, including the taking and carrying of land within any municipality for the purpose of a drill shed or armoury for any militia or volunteer force having its headquarters in the municipality.

Under section 562 the municipal councils are also empowered to make by-laws for regulating harbours, preventing the filling up or encumbering of harbours, erecting and maintaining necessary beacons, erecting and renting wharves, piers and docks in harbours, and also floating elevators, derricks, cranes and other machinery suitable for loading, discharging or repairing vessels and regulating vessels, craft and rafts arriving in any harbour, imposing harbour dues, and for regulating and compelling the removal of wrecks, etc.

Further, by section 591, by-laws may be passed for aiding any regularly organized rifle association, or for adding to the sum paid during the period of annual or other authorized drill, or when on active service; to any enlisted member or members of any corps of active militia organized within such municipality, or for the purpose of military outfit or equipment of the members of such corps.

The subject of militia and defence, and navigation and shipping, having been by the British North America Act assigned to the exclusive legislative authority of Parliament, and a Legislature having no power of taxation except for provincial, municipal or local purposes, the undersigned has very serious doubts as to the capacity of a local Legislature to enact such provisions as the foregoing. In case of a conflict upon these subjects between Dominion and provincial legislation there is, however, no doubt that the courts would uphold Dominion authority according to the constitution,

and in the absence of such a conflict the undersigned does not consider that the provisions in question are so objectionable in substance as to require the disallowance of the Act, which, of course, in the main, deals with important matters within provincial jurisdiction.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 27 June, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, 20th June, 1904.

To His Excellency the Governor General in Council:

The undersigned has had his attention called to a provision in chapter 7 of the Ontario statutes of 1903, entitled "An Act to amend the Statute Law," the full purport and effect of which escaped his notice when he recommended in his report of the 8th January last, that that Act, amongst others, should be left in its operation.

Section 53 of the Act amends section 18 of "The Act respecting Licensing of Extra Provincial Corporations," chapter 24 of 1900, by striking out the first three paragraphs of the said section and inserting in lieu thereof the words, "There shall be paid to His Majesty for the public uses of Ontario by every corporation requiring a license under this Act, such fees as may from time to time be approved of by the Lieutenant Governor in Council." The repealed paragraphs are those which prescribed the fees to be paid by, amongst other classes of companies those incorporated by Act of the Parliament of Canada and authorized to carry on business in Ontario, such fees being generally \$25 if the capital stock of the company did not exceed \$100,000, and \$50 if it did exceed that sum.

Your Excellency may remember that the predecessor of the undersigned, the late Mr. Mills, took exception to the Act of 1900 which is thus amended on several grounds, one of which was that the Legislature ought not to exact fees discriminating between the trading corporations established by Parliament and those established by provincial legislation; and that his objections being concurred in by Your Excellency in Council and communicated to the government of Ontario the Act was at the next following session so amended as to remove the objectionable features to some extent. The amending Act, however, did not do away with the discrimination between Dominion and provincial companies. This was pointed out by Mr. Mills to the provincial authorities, and on 3rd May, 1901, he reported to Your Excellency in Council that he had informed the Prime Minister of the province in effect that the Act should be further amended, so as either to exempt corporations created by Parliament from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fees required under the Act should be imposed equally upon corporations created by the Dominion and those created by the Legislature of Ontario. The minister went on to state that he considered it impossible to admit, consistently with the general interests of Canada, the principle of interference with Dominion policy by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and that he apprehended that disallowance was the appropriate remedy in such a case. The provincial government had, however, by an amendment already made, gone a considerable way to remove some of the most serious objections to the Act, and he was encouraged to believe that it would at the first opportunity promote further legislation either to exempt Dominion corporations from the statute, or to establish equality with regard to license fees and taxation as between Dominion and provincial companies. He considered, however, that Your Excellency's government should have a formal assurance of such an intention

from the government at Toronto, and on his recommendation a copy of his report, approved by Your Excellency in Council, was transmitted to the Lieutenant Governor of Ontario with a request that he inform Your Excellency's government as to whether at the first opportunity for so doing, his government would promote further amendments to the Act in question as suggested in the report.

An order of the Lieutenant Governor in Council was thereupon passed, (14th May, 1901) and communicated to Your Excellency's government, approving of a report of the Prime Minister of the province in which, after referring to Mr. Mills' report, he recommended that an Act of the Legislature under which a discrimination may be exercised against corporations having authority from the Dominion government should be so amended as to establish equality in regard "to license fees and taxation between Dominion and provincial companies," as suggested by the minister, and that legislation to that effect should be introduced and carried through at the next session of the Legislature.

No such legislation was passed at the next session of the Legislature, and now by the section above quoted from chapter 7 of the statutes of 1903 the Act is made much more open to the objection taken by Mr. Mills in his report of 3rd May, 1901. The fees of \$25 and \$50 under the Act as it stood would probably be claimed by the province not to be unreasonable, considered merely as a charge in connection with the application for and the issue of the licenses, and they were perhaps not large enough to very grievously burden the companies liable to pay them. Under the amended provisions it is obvious that the fees may be made so large as to constitute a real grievance to companies which have or may obtain Dominion charters, as well as a discrimination between Dominion and provincial companies highly objectionable on other grounds.

For the reasons stated the undersigned would think it his duty to recommend the disallowance of chapter 7 aforesaid unless the government of the province should undertake to promote at the next session of the Assembly, legislation of the character suggested in the report of his predecessor above referred to, that is to say, either exempting corporations created by Parliament from the requirement to procure licenses, or providing that the obligation to take out licenses and pay the license fees prescribed, shall be imposed equally upon Dominion and provincial corporations. The time for disallowance expires on the 31st July next, and there is not, therefore, a great deal of time left for consideration and negotiation, and the undersigned recommends that a copy of this report, if approved, be sent forthwith to the Lieutenant Governor of the province with the request that he inform Your Excellency at the earliest possible time whether his government will enter into such an undertaking.

C. FITZPATRICK,

Minister of Justice.

Transmitted to the Secretary of State by the Administrator, 4 August, 1904

Report of the Attorney General of Ontario approved by the Administrator in Council 2 August, 1904

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration the report received from the Honourable the Minister of Justice, dated 20th June, 1904, approved by His Excellency the Governor General in Council on the 27th June, 1904, whereby it is recommended that under certain circumstances chapter 7 of the Acts of the session of the Legislature of Ontario for 1903, being the Statute Law Amendment Act, 1903, be disallowed.

The sole section of this Act with which fault is found, is section 53, which amends section 18 of the Act respecting licensing of Extra Provincial Corporations, by striking out the first three paragraphs thereof, and schedules A and B thereto, inserting in lieu thereof the following words:—

“There shall be paid by every corporation requiring a license under this Act such fees as may from time to time be approved of by the Lieutenant Governor in Council.”

Disallowance is suggested unless the Government of the province shall undertake to promote at the next session of the Legislative Assembly, legislation either exempting corporations created by Parliament from the requirements to procure licenses or providing that the obligation to take out licenses and pay the license fees prescribed shall be imposed equally upon Dominion and provincial corporations.

No complaint is made that under the provincial legislation unreasonable fees have been exacted in connection with applications by Dominion corporations for the issue of these licenses. But it is suggested that under the amendment of the session of 1903, section 53 of the Statutes Law Amendment Act, 1903, fees might be imposed of so large an amount as to constitute a real grievance to companies having Dominion charters, and that there might be objectionable discrimination between Dominion and Provincial companies.

The section in question is one of 63 sections of what has been known as the annual “Omnibus” Act which usually contains a considerable number of miscellaneous amendments of the Provincial Statute Law, some of them of minor importance but not a few of very considerable importance; and it is undoubtedly the case that this particular section was not considered in connection with the despatch of the Honourable the Premier, dated 14th May, 1901, referred to in the report of the Minister of Justice. In fact the clause was added to the Bill in Committee of the Whole House and adopted, as presumably facilitating the practical administration of this particular branch of detail work of the Provincial Secretary's Department.

As has already been pointed out many other sections of the Act deal with matters of very great importance. They have been acted under, interests have been created and conditions have arisen which would be very seriously affected by disallowance of the entire Act, and the undersigned assumes that disallowance could not be confined to a portion of an Act. No discrimination has taken place under the section objected to, and there need be no apprehension that there will be any discrimination before the next session of the Legislature, when the undersigned is of opinion that this section should be repealed and legislation substituted in the shape of an Act specially dealing with this subject and substantially complying with the terms of the despatch of 14th May, 1901, and the undersigned recommends that an undertaking be given to this effect.

The undersigned does not enter upon a discussion of the constitutional question. He dissents however from the view that the provinces may be controlled by the Dominion in regard to the exercise of the rights of raising revenue, by imposition of taxes or exaction of license fees. He also points out that Dominion companies constantly come to the provincial governments for authority to hold lands, an authority which under the decisions of the courts they do not possess.

The undersigned also refrains from calling attention to the anomalies constantly observed in connection with the concurrent exercise of powers by the Dominion and provinces in granting charters.

There should be some definition of companies chartered for Dominion, as distinguished from provincial objects. It should not be left to the whim of the applicant, who may say in his petition, no matter how entirely local or how strictly provincial his proposed company may be—that he seeks incorporation of a company with “Dominion objects.” It is very much like the case of a short line of railway between

two towns in the interior of the province being declared "*a work for the general benefit of Canada.*"

All of which is respectfully submitted.

J. M. GIBSON,

TORONTO, 25th July, 1904.

Attorney-General.

4 EDWARD VII, 1904

(*Approved, 16 November, 1904.*)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last sessions of the legislatures thereof (1904), as follows:—

Ontario, 4 Edward VII. These statutes were received by the Secretary of State on 6th July, 1904.

These statutes may be left to their operation, but attention is directed to Chapter 18, intituled: "An Act respecting aid to certain Railways."

This Act authorizes a subsidy in cash and land to the Grand Trunk Pacific Railway, which is a railway not within the authority of the legislature of Ontario. It goes on to provide among other things that the location of the line of railway shall be subject to the approval of the Railway Committee of the Executive Council of Ontario; that the rates for passengers and freight which may be charged upon the railway shall be such as may be approved by the said committee; that there shall be no secret special rates, rebates, drawbacks or concessions to favourite shippers, nor anything which will affect or prevent free competition, and that the company shall be obliged upon the request of any township or county municipality through which the line of railway passes to carry roadmaking materials at the actual cost of handling and carriage.

These and other like provisions affecting the construction or working of the railway are not competent to the legislature. It may be that they are only intended to have effect as matter of agreement between the local government and the company as a condition to the grant of the subsidy, and in that view they may be left to such operation as they may have.

The undersigned desires, however, to reiterate that inasmuch as railway such as the Grand Trunk Pacific are excluded from provincial authority by the British North America Act, the provisions in question cannot have effect as statutory requirements binding the company.

Chapter 81, intituled: "An Act respecting the London, Aylmer and North Shore Electric Railway Company," and several other Acts incorporating or affecting companies, contain a provision which has become not unusual in provincial Acts relating to companies whereby it is enacted that aliens may be shareholders in such companies, entitled to vote on their shares and eligible as directors.

These enactments are, in the opinion of the undersigned, *ultra vires*, as legislation with regard to the rights and capacities of aliens is clearly within the exclusive authority of parliament.

The undersigned does not, however, on that account recommend the disallowance of these Acts, as he is not aware that the public interest so requires, and judicial effect may of course be given to the objection if it should become necessary to raise it.

* * * * *

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province, shall be communicated to the Lieutenant Governor of the province.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

5 EDWARD VII, 1905

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 6th November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislative Assembly of Ontario, passed in the 5th year of His Majesty's reign, 1905, and received by the Secretary of State for Canada on 17th June last, and he is of opinion that these statutes may be left to such operation as they may have.

Chapter 83, intituled: "An Act respecting the City of Toronto," provides that the municipal corporation of the city of Toronto may straighten the Don river, and enter upon, take, use and acquire all necessary lands for the purpose of doing such work, and that the corporation may divert the river into the straightened channel.

The undersigned construes this enactment as intended merely to confer corporate capacity upon the municipal corporation to perform the work in question, and not as intended to authorize and empower the municipality to interfere with navigation without obtaining adequate legal sanction. It is clear, of course, that no authority for any such purpose can be conferred by a local legislature.

Chapter 117, intituled: "An Act to incorporate the United Nickel Company of Canada," incorporates the said company with authority to acquire the property and rights of the Huronian Company, Limited, and of any other companies incorporated for the purpose of mining, smelting, refining or any similar or cognate purpose.

The undersigned does not construe this Act as intended to authorize the company to carry on business beyond the limits of the province, although its powers in this respect are not so clearly or expressly limited by the Act as in the opinion of the undersigned they ought to be. The Act cannot, of course, operate except to constitute, and with reference to, a local mining company. The undersigned considers, however, that it would be advisable to amend the Act by adding a proper limiting provision as to the powers of the company.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Ontario for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

6 EDWARD VII, 1906

To His Excellency the Governor General of Canada in Council:

The petition of the undersigned

HUMBLY SHEWETH:

1. That your petitioners are a mining company duly incorporated under the laws of the province of Ontario.

2. That your petitioners are entitled to the rights acquired by one W. J. Green, in twenty acres known as J.S. 71 and being part of the land under the waters of Cobalt lake, in the township of Coleman, in the province of Ontario, and to the minerals thereunder, under and by virtue of the discovery by the said W. J. Green of valuable mineral thereon on the eighth day of March, 1906.

3. That your petitioners say that under the Order in Council of the 30th of October, 1905, referred to in the annexed copy of petition, Cobalt lake, which is part

of the township of Coleman, was open for exploration at the time of the said discovery by the said W. J. Green, and that he thereby became entitled to the said property under the provisions of the Mines Act and the regulations then in force.

4. Your petitioners joined with others in submitting the petition of which a copy is hereto annexed to the Lieutenant-Governor in Council of the province of Ontario but the prayer thereof was refused, and your petitioners were denied any relief whatever.

5. That an appointment was made by the Honourable the Premier of Ontario to hear your petitioners and others interested, but although asked for, no opportunity was afforded your petitioners of giving evidence to establish their rights which evidence they were then and still are prepared to give under oath. On the contrary at the said interview the Premier read an *ex parte* statement which had been prepared before hearing your Petitioners and which was at the time justly characterized by Mr. C. H. Ritchie, K.C., senior counsel for your Petitioners as a Brief against your Petitioners.

6. Your Petitioners have always been ready and willing to prove conclusively all the allegations of fact contained in the said Petition and have offered to do so by evidence under oath, but have been refused an opportunity to do so.

7. But for the Act of the Ontario Legislature hereinafter referred to your Petitioners would be entitled to a Mandamus to compel the recording of their mining claim by virtue of which they are entitled to the minerals under said twenty acres. The application for a Mandamus should be made before the 7th March, 1907. The said Act was read three times, in one day, being at the close of the session of the Ontario Legislature without any previous notice being given and your Petitioners or any other person whose rights might be unjustly taken away thereby had no opportunity of making any objection to the passing of the said Act.

8. At the said interview Mr. C. H. Ritchie, one of His Majesty's Counsel, stated that he would pledge his professional reputation that any court in the province would construe the said Order in Council of 30th October, 1905, as throwing Cobalt lake open for exploration and if it was so open for exploration, it is conceded by Ontario that your Petitioners are of right absolutely entitled to the property claimed by them.

9. The said Act, if not disallowed by Your Excellency, would confiscate the vested statutory rights of your Petitioners to the said part of Cobalt lake without compensation although the said rights had become vested before the passing of the said Act.

10. If not disallowed the effect of the passing of the said Act will be to discourage and tend to prevent the investment of capital in the mining industry in any part of Canada and especially in Ontario.

11. The injurious effect of the said Act if not disallowed upon the credit of the Dominion of Canada and all the provinces thereof will be exceedingly great.

Wherefore your Petitioners pray that the said Act, being 6 Edward VII., chapter 12, entitled "An Act respecting Certain Orders in Council and Certain Crown Statutes," may be disallowed, pursuant to the authority vested in Your Excellency in Council by the British North America Act.

And your Petitioners will ever pray.

THE FLORENCE MINING CO., LIMITED.

J. HOBSON, *Sec'y.*

H. S. PRITCHARD, *President.*

L.S.

To His Honour the Lieutenant Governor of the Province of Ontario, in Council:

The petition of James McLaughlin, Sr., of Owen Sound; W. E. Stanley, of Lucan; Wilson M. Southam and P. D. Ross, of Ottawa; George Gordon, of Cache bay; W. J. Green, of the city of Toronto, and the Florence Mining Company, Limited,

HUMBLY SHEWETH:

1. That at the last session of the Provincial Legislature an Act was passed confirming a certain Order in Council passed on the fourteenth day of August, 1905, in reference to Cobalt lake and other areas, and declaring among other things that all discoveries and claims respecting such lands and mining rights shall be dealt with by the Lieutenant Governor in Council as he may think fit.

2. That your petitioner W. J. Green secured the services of an engineer who had made a careful study of the geological formation and mineralogical character of the rocks and mineral deposits in the township of Coleman, and who concluded that there were certain deposits of valuable ore or mineral in place under the waters of Cobalt lake.

3. That your petitioner W. J. Green thereupon applied to the Bureau of Mines and obtained all the information then available in the Crown Lands Department in regard to the regulations in force, and according to the information and regulations supplied him on behalf of the Crown, the said Cobalt lake was at the said time open for exploration and discovery, and believing that if he made a discovery under the said Cobalt lake he would be entitled thereto under the Mines Act and regulations passed in pursuance thereof, your petitioner, W. J. Green, expended *bona fide* a large sum of money, and as a result thereof made a *bona fide* discovery of valuable ore or mineral in place under the waters of said Cobalt lake, he immediately complied with the regulations relating thereto and had the same surveyed, and shortly after within the time limited therefor, paid to the Crown Lands Department the purchase money therefor.

4. That upon the said W. J. Green tendering the notice and affidavit required under the Mines Act and the regulations passed in pursuance thereof, he was informed by the government official at Haileybury that he would not record the claim of the said Green, as he, the said official, had received instructions from the department not to record claims on Cobalt lake and on two other lakes which he mentioned. That subsequently your petitioner, W. J. Green, learned that an Order in Council had been passed on 14th August, 1905, withdrawing the said Cobalt lake from exploration. The said Order in Council was not published for some months thereafter. It was published in the *Gazette* on November 4th, 1905, but was not directly or indirectly referred to in the regulations handed your petitioner, Mr. W. J. Green, by the Government for his guidance which contained the subsequent Order in Council of 30th October. The said Order in Council of 30th October authorized the Mining Inspector to record mining claims in the Township of Coleman and in certain other townships therein named. Cobalt lake is part of said township of Coleman, and any one reading the said regulations as furnished by the Government would be justified in concluding that Cobalt lake which had not been hitherto disposed of was thereby thrown open for exploration.

5. That the said W. J. Green offered to the Crown Land Department to demonstrate that he acted in the utmost good faith and had made a *bona fide* discovery of valuable ore or mineral in place as the result of the expenditure of a considerable amount of money, and also that there was no prior valid claim to the said location applied for by him, and also that he was the first discoverer of value ore or mineral in place under the said Cobalt lake and on the location applied for by him, and that he was justly entitled to said location.

6. Your petitioners humbly submit that they were justified in relying on the printed information furnished them on behalf of the Crown which contained the Order in Council passed on the 30th of October, 1905, but contains no reference direct or

indirect to the said Order in Council of the 14th of August, 1905, and your petitioners consequently submit that the discoveries made *bona fide* by them should be protected and that their rights in the premises are founded on natural justice and clear equity.

7. Your petitioner, W. J. Green, has transferred all his right, title and interest to the W. J. Green Location, Cobalt lake, which was surveyed as J.S. 71, to the Florence Mining Company, Limited, which is now entitled thereto.

8. Your petitioners, other than said Green and said Company, have purchased the right to the benefit of the information acquired as aforesaid as to other mineral deposits under said Cobalt lake, and have offered to the Crown Land Department fully to comply with the Mines Act in respect thereof, and submit that they should not be deprived of their rights, but that said Cobalt lake should be dealt with under the general law and their rights protected.

9. It is too clear for argument that if the matter were one between private parties, your petitioners in the circumstances would be entitled to succeed, and it is confidently submitted that in dealing with the question involved the Crown should consider itself bound by the principle of law which the Courts of the land would enforce against private parties, and that therefore the rights of your petitioners in Cobalt lake should be protected and recognized.

Your Petitioners therefore pray:

1. That the rights and claims of your Petitioners in respect of the lands under the waters of Cobalt lake should be investigated and considered.

2. The said lake should be dealt with under the general law, and granted to the first discoverers of valuable ore or mineral in place under the waters of said lake.

3. That your Petitioners being entitled to the rights of such first discoverers should be held entitled to the portion of the lands under the said Cobalt lake now vested in the Crown.

And your Petitioners will ever pray.

Dated this 8th day of June, A.D. 1906.

J. M. CLARK,

Solicitor for W. J. Green and The Florence Mining Company, Limited.

JAMES BAIRD,

Solicitor for James McLaughlin, Sr.; W. E. Stanley, Wilson M. Southam, P. D. Ross and George Gordon.

TORONTO, December 11, 1906.

Hon. A. B. AYLESWORTH, K.C.,

Minister of Justice,

Ottawa, Ont.

DEAR SIR.—I write you on behalf of Mr. Frank B. Chaplin, Mr. Henry Dreany and others, to ask for disallowance of an Act of the Ontario Legislature passed at the last session and chaptered 12, on the ground that the Statute interferes with vested rights of property, without providing any compensation.

Briefly stated, the position of my clients is, that prior to the month of August, 1905, they made discoveries of valuable mineral in the bed of Cobalt lake, the bed of Cobalt lake being at the time part of the Temiskaming Mining Division open for location under the Mines Act of Ontario; that they complied with the requirements of the Act by staking and recording their claims, and received from the Mining Recorder the usual certificate of record of their claims. Thereupon their rights in the mining location so discovered, staked and recorded, became absolutely vested under the provisions of the Mines Act of Ontario, and the Crown had no option to refuse a patent. On the 14th of August, after such rights had so become vested, an Order in Council was passed, copy of which I inclose.

I thereupon represented, on behalf of my clients, to the Government of Ontario, that the Order in Council was invalid and ineffective, and discussion and consideration of that question thereupon arose. The matter was kept continually before the Government from August, 1905, until the last day of the session in May, 1906. Within two or three days of the close of the session, and without any warning or communication to me, and without discussion upon the floor of the House, or in Committee, the Act in question (chapter 12) was passed in one day without being printed, validating the Order in Council, and, as I submit, confiscating my client's rights.

Since the 14th day of May my clients have, without prejudice to their rights to have the Act disallowed, been pressing upon the Government of Ontario that they should, under the last clause of section 1, rectify the wrong which they have done, by dealing with it by Order in Council. They have now declined to do this, and I am, therefore, compelled to take the only other course open, namely, to apply for disallowance of the Act. As the Government are inviting tenders for the purchase of this lake, to be put in by the 20th of December, I write to ask your attention to the matter.

I have written to the Government of Ontario, asking that, pending this application, no action be taken with the lake, and to suggest to them that the difficulty may be obviated by their adding to clause 1 of the Act a section providing for compensation in respect of vested rights existing before the 14th of August, 1905, such rights to be established by an ordinary action in the High Court of Ontario. As my clients are eminently substantial people, there can be no reasonable objection to giving them an opportunity of establishing their rights.

I am aware that at first sight this legislation appears to relate to a matter of property and civil rights within Ontario, but it is none the less true that such action exercises a prejudicial effect on Canada at large, by destroying the credit that should attach to the Public Acts of the Provinces, and to rights that have been legally obtained thereunder.

You will find a precedent, which appears to me to be on all fours, where legislation of New Brunswick interfering with the terms on which mining leases were held was disallowed by the late Sir John Thompson. *Dominion and Provincial Legislation, 1867-1895*, page 750. Other cases will be found at pages 177, 238, 376, 464, 856, 941, 1047 and 1176 of the same volume.

I am preparing a petition setting out the above facts and proof verifying the same, but meantime, write you this letter, as the matter is urgent.

Yours truly,

C. A. MASTEN.

Copy of an Order in Council Approved by the Lieutenant Governor, 14 August, A.D. 1905

Upon the recommendation of the Honourable the Minister of Lands and Mines, and considering the importance of the subject, and the desirability of exercising careful judgment in arriving at a conclusion with reference to the adoption of a scheme or system of dealing with the mining question, the Committee of Council advise that all that tract of land or territory formerly known as the Lumsden and Booth Timber Limit, now known as Gillies Brothers Timber Limit, lying on both sides of the Montreal river, in the Nipissing district, containing one hundred square miles, more or less, also the lakes known as Cobalt and Kerr lakes, situated in the township of Coleman, be withdrawn from exploration for mines and minerals and from sale, lease or location.

Certified,

J. LONSDALE CAPREOL,

Clerk, Executive Council.

(Approved 28 May, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, 21st May, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copy of the Statutes of the Legislature of Ontario, passed in the sixth year of His Majesty's reign, 1906; received by the Secretary of State for Canada on 13th June last, and has the honour to report that these may be left to such operation as they may have, subject to the following comments:—

Chapter 12, intituled "An Act respecting certain Orders in Council and certain Crown Suits."

This Act confirms an Order of the Lieutenant Governor in Council of 14th August, 1905, withdrawing from exploration for mines and minerals and from sale, lease and location the lands known as Gillies Brothers' timber limit lying on both sides of the Montreal river, in the district of Nipissing, containing one hundred square miles, more or less, and also the lakes known as Cobalt and Kerr lakes, and it declares the said Order in Council to be binding and effectual notwithstanding that at or before the time of the passing thereof discoveries were made or claims to mining rights in the reserved areas were pending. It is also provided that all discoveries and claims respecting such lands and mineral rights, if any, shall be dealt with by the Lieutenant Governor in Council as he may think fit.

The Act also confirms another Order of the Lieutenant Governor in Council of 24th January, 1906, vesting in the Temiskaming and Northern Ontario Railway Commission certain lands and lands covered with water in the District of Nipissing, and declares that the said last mentioned Order in Council was intended to vest and did vest in the said Railway Commission as and from the passing of the Act to authorize the construction of the Temiskaming and Northern Ontario Railway, 2 Edward VII., c. 9, the fee simple in the said lands, and all mines and minerals thereunder, and all mining rights therein, absolutely free from all claims and demands of every nature whatsoever in respect of or arising from any lease or patent of any mining lands or mining location at any time granted.

The Act contains a further section declaring the consequences which shall ensue whenever a mining patent or mining lease, or lease of mining rights is by proceedings of the High Court of Justice at the instance of the Crown repealed or avoided.

Application for disallowance of this statute has been made on behalf of Frank B. Chaplin, Henry Dreany and others, upon the ground briefly stated that they had made discoveries of valuable minerals in the bed of Cobalt lake and acquired rights therein to which they were entitled at the time of the passing of this Act, and which they fear are by the effect of the Act taken away, and if taken away there is no provision for compensation.

The Florence Mining Company, Limited, also petitions for the disallowance of the Act upon similar grounds alleging that the Company had acquired the rights of one W. J. Green in twenty acres of land under the waters of Cobalt lake and in the minerals therein under and by virtue of discovery by the said Green on 8th March, 1906.

The undersigned is not satisfied, however, that it could have been intended by this Act, or that the Act operates to affect private interests actually acquired existing or vested at the time of the passing of the Act. Such an effect cannot be attributed to the Act unless unmistakably appearing, if not by express words, at least by clear implication and beyond reasonable doubt.

The undersigned does not consider therefore, that he should recommend the disallowance of this Act.

Chapter 132, "An Act respecting 'The Ontario and Minnesota Power Company, Limited.'"

This company apparently was incorporated by letters patent under the Great Seal of Ontario, dated 13th January, 1905, and by Dominion Act, 4 and 5 Edward VII., Chapter 139, power is conferred upon the Company to construct, develop, acquire, own, use and operate the water-power existing on the Rainy river at or near the Town of Fort Francis, and to construct works in connection with the said power. It is further provided by the Dominion Act that the Company shall provide power or electrical energy for use on the Canadian side of the International Boundary Line concurrently as it provides power or electrical energy for use in the United States, so that there shall be no less power or electrical energy available for use on the Canadian side than on the American side. The buildings and machinery for delivery of power and electrical energy on the Canadian side are to be situated upon the Canadian side, and no part of the power or electrical energy provided for use upon the Canadian side is to be diverted or used in the United States without the Order of the Board of Railway Commissioners.

The intention of parliament appears to be, therefore, that this Company shall have capacity to carry on its business, subject to the provisions of the statute, both in Canada and the United States.

By the present Ontario Act reference is made to the said Dominion statute, facts are recited in the preamble, and it is enacted that the Company shall from the said water-power provide power or electrical energy for use on the Canadian side of the International Boundary Line concurrently as it provides power or electrical energy for use in the United States, so that except as provided by Order of the Lieutenant Governor in Council there shall not be less of the said power or electrical energy available for use on the Canadian side than on the American side; provision is made that the power or electrical energy provided for use on the Canadian side is not to be diverted to the United States without order of the Lieutenant Governor in Council, and there are other provisions purporting to effect the powers of the Company.

The undersigned entertains grave doubts as to the position of a company constituted as this one appears to be. It is originally incorporated by Ontario. Powers or obligations are subsequently conferred or imposed upon it by Parliament, and these are again modified or affected by subsequent provincial legislation relating to the constitution and corporate powers of the Company.

It appears to the undersigned that this Company so far as concerns its corporate powers, must be either under the jurisdiction of parliament or of the provincial legislature. If, as is apparently not the case, it is a company incorporated for provincial objects, the Dominion legislation may not be effective. If, on the other hand, the Company is a corporation whose powers include objects extra-provincial, it is difficult to see how these objects can be affected by a provincial statute.

The undersigned considers, however, that the courts may conveniently determine any question which may, in view of the existing legislation, arise with regard to the position of this company, and, therefore, he does not recommend disallowance. Attention may also be directed in this connection to the recent Act of the Dominion Parliament, 6-7 Edward VII., Chapter 16, intitled: "An Act to regulate the exportation of Electric Power and certain Liquids and Gases."

Chapter 138. "An Act to incorporate the Twin City Chamber of Commerce."

There is a Dominion Act regulating the incorporation and powers of boards of trade and chambers of commerce. It may be that this legislation so far occupies the field as to make it incompetent to a province to create such an institution, and it may be that the subject falls so far strictly within the regulation of trade and commerce as to make it incompetent to a province, even in the absence of Dominion legislation, to incorporate a chamber of commerce with the usual powers. These are questions which the undersigned does not find it necessary at present to decide, as it appears that no harm can come by leaving the Act to its operation, if any.

Chapter 145. "An Act to incorporate the 'Executive Committee of the Provincial Young Men's Christian Association of Ontario and Quebec.'"

If it is intended by this Act to enable the corporation to carry out its objects in both provinces, as the name implies, the Act may be in excess of provincial authority. The Act may, however, be left to such operation as it may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

7 EDWARD VII, 1907

(Approved 29 April, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 21st April, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes passed by the legislature of Ontario, 7 E. VII (1907), received by the Secretary of State for Canada on 30th April last, and he has the honour to submit the following comments:—

Chapter 15, intituled "An Act respecting Cobalt Lake and Kerr Lake."

The Florence Mining Company has petitioned for the disallowance of this Act, and there has been the usual correspondence with the local authorities. Counsel for the petitioning company has also presented several memoranda in support of the petition.

Application that this Act should be disallowed has also been made within the last few days on behalf of one Henry Dreany, who asserts that he recorded a claim in accordance with the requirements of the statute to a part of the bed of Cobalt lake on the night of the 17th-18th July, 1905.

It is alleged on behalf of the petitioning company that one W. J. Green, on 8th March, 1906, discovered minerals and took up twenty acres of the bed of Cobalt lake, in the township of Coleman, embracing his discovery, and that a statutory right to the said twenty acres having thus become vested in the said Green he duly assigned his interests so acquired to the petitioning company. Subsequently the government of Ontario issued a patent to the Cobalt Lake Mining Company, including the twenty acres so taken up by the said Green. The Florence Mining Company (the petitioner) thereupon instituted an action in the High Court of Justice for Ontario, claiming a declaration of its right and an injunction and account against the Cobalt Lake Mining Company, and that the letters patent to the latter company should be set aside.

Pending this litigation and at a time when the said action was set down for trial and about to be heard the statute now in question was passed. It recites the sale of the lands forming the bed of Cobalt lake and the issue of patents therefor to the purchasers thereof (referring presumably to the Cobalt Lake Mining Company), and proceeds to declare that the sale is confirmed, and "the fee simple absolute in the said lands and in all mines and minerals being and lying in or under the said lands, and all mining rights therein and thereto are declared to be vested in the said purchasers respectively as and from the date of the said sales, absolutely freed from all claims and demands of every nature whatsoever in respect of or arising from any discovery, location or staking."

There is a further provision that notwithstanding anything in the Act "all discoveries and claims, if any, made or arising prior to the said sale shall be dealt with by the Lieutenant Governor in Council as he may think fit."

The case upon which the petitioning company relies is therefore briefly that the company having, under the provisions of the general mining law of Ontario, acquired the right to this mining property through discovery by Green and the assignment of Green's interest, the Ontario government proceeded to sell the property to the Cobalt Lake Mining Company disregarding the rights of the petitioning company, and that upon these being asserted in the courts the statute in question was passed, the effect of which really is to transfer the petitioning company's title to the Cobalt Lake Mining Company and to preclude the petitioners from any redress notwithstanding their claim to be the true owners of the property.

Although such legislation must be admitted to be harsh and unjustified in principle, yet, relating as it does to a matter within the exclusive legislative authority of the province, its effect cannot reasonably be questioned.

It is true that one of the grounds stated for disallowance in the petition is "that the said Act is not a legislative Act authorized by the British North America Act".

Dicta of Lord Watson in *Dobie vs. Temporalities Board*, 7 App. Cas. 136, and of Lord Herschell in the *Fisheries Case*, 1898, App. Cas. 700, are quoted by the petitioner's counsel in support of this view, but these dicta when considered with their context, which is not included in Counsel's memorandum, do not in anywise support his contention.

A notable precedent for the disallowance of an Act as interfering with vested rights and the title to property in litigation is the case of the Ontario Act, 44 V., c. 11, intitled "An Act for the Protection of Public Interests in Rivers, Streams and Creeks". Sir John A. Macdonald, for the Minister of Justice, reported on 17th May, 1881, recommending the disallowance. The report is printed in the volume of Provincial and Dominion Legislation, 1867-1895, pages 177 to 178. The following is the most pertinent passage: "I think the power of the local legislatures to take away the rights of one man and vest them in another, as is done by this Act, is exceedingly doubtful, but assuming that such right does in strictness exist, I think it devolves upon this Government to see that such power is not exercised in flagrant violation of private rights and natural justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the Act over-rides a decision of a court of competent jurisdiction by declaring retrospectively that the law always was and is different from that laid down by the court."

This Act was re-enacted at the following session of the Ontario legislature, and again disallowed. See Order in Council of 20th September, 1882, in the same volume, page 188.

There seems much ground for the belief that the framers of the British North America Act contemplated and probably intended, that the power of disallowance should afford to vested interests and the rights of property a safe-guard and protection against destructive legislation.

In the *Goodhue will case*, speaking in 1873, the Hon. Wm. Henry Draper, Chief Justice of the Court of Appeal of Ontario, in discussing legislation which might deprive parties of "actual or even possible" interests, says (19 Grant, at p. 384): "Such bills are still subject to the consideration of the Governor General, who, as the representative of the Sovereign, is entrusted with authority,—to which a corresponding duty attaches,—to disallow any law contrary to reason or to natural justice and equity."

In 1893, the Honourable J. Aldric Ouimet, Acting Minister of Justice, referring to the Ontario Statute, 55 Vic., c. 8, says (Provl. Legislation 1867-95, page 239): "Assuming the statute to have the effect which the Railway Company attributes to it, the case would appear to be that of a statute which interferes with vested rights of property and the obligation of contract without providing for compensation, and

would, therefore, in the opinion of the undersigned, furnish sufficient reason for the exercise of disallowance."

These authorities, if followed, would doubtless require the disallowance of the present Act, but during later years different views have prevailed and in many cases applications for disallowance upon the ground of undue interference with vested rights have been refused for the reason that it is contrary to the true intent and spirit of the British North America Act that the Dominion Government should inquire into or determine the merits of provincial legislation which is *intra vires* and not in conflict with Dominion policy.

The Honourable David Mills, when Minister of Justice, had occasion to report upon an Ontario statute, 1 E. VII, Chapter 21, as to which a petition had been submitted seeking disallowance for the reason among others that the Act impaired or interfered with an existing contract. The Minister stated: "The undersigned conceives that Your Excellency's Government is not concerned with the policy of this measure. It is no doubt *intra vires* of the Legislature, and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the Legislature, and the Acts of the Legislature may be ultimately judged by the people. The undersigned does not consider, therefore, that Your Excellency ought to exercise the power of disallowance in such cases."

(Report 31st December, 1901, ante p. 51.)

Referring to a British Columbia statute, 1 E. VII, c. 45, the Minister in the same report observes: "The undersigned bases his refusal to recommend disallowance upon the fact that the application proceeds upon grounds affecting the substance of the Act in regard to matters undoubtedly within the legislative authority of the province and not affecting any matter of Dominion policy. It is alleged that the statute affects pending litigation, and rights existing under previous legislation and grants from the province. The undersigned considers that such legislation is objectionable in principle and not justified, unless in very exceptionable circumstances, but Your Excellency's Government is not in anywise responsible for the principle of the legislation, and, as has been already stated in this report, with regard to an Ontario statute, the proper remedy in such cases lies with the legislature or its constitutional judges." (post.)

The said Act of British Columbia was further considered a few months later by Mr. Fitzpatrick, then Minister of Justice, and in reporting, with a recommendation similar to that of his predecessor, Mr. Fitzpatrick states: "It appears that litigation was pending between the Government and the petitioners at the time of the passing of the Act with regard to the petitioners' liability to pay these royalties, and no doubt a very strong case is made out by the petitioners in support of the view that the legislature should have allowed the existing law to operate, and should not have undertaken to legislate so as to diminish or affect existing rights. The undersigned cannot help expressing his disapprobation of measures of this character, but there is a difficulty about Your Excellency in Council giving relief in such cases without affirming a policy which requires Your Excellency's Government to put itself to a large extent in the place of the legislature and judge of the propriety of its acts relating to matters committed by the constitution to the exclusive legislative authority of the province." (Rep. 16th May, 1902; post.)

The undersigned shares the views expressed by Mr. Mills and Mr. Fitzpatrick. In his opinion it is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of annulling provincial legislation, even though Your Excellency's Ministers consider the legislation unjust or oppressive or in conflict with recognized legal principles so long as such legislation is within the power of the Provincial Legislature to enact.

The undersigned is of the opinion that where an Act is of a merely domestic or local character and does not affect any matter of Dominion interest Your Excellency's Government ought not to review the policy or propriety of the measure which is

exclusively a matter of provincial concern, and he accepts the general view that it is not the office or right of the Dominion Government to sit in judgment considering the justice or honesty of any Act of a provincial legislature which deals solely with property or civil rights within the province.

The undersigned observes that in Sir John Macdonald's report of 8th June, 1868, submitted for the purpose of settling the course to be pursued with respect to Acts passed by the provincial legislatures, only four cases are stated as proper subjects for consideration, with a view to disallowance, namely, Acts which the Minister may consider,

1. As being altogether illegal or unconstitutional;
2. As illegal or unconstitutional in part;
3. In cases of concurrent jurisdiction as clashing with the legislation of the general Parliament;
4. As affecting the interests of the Dominion generally. (Dominion and Provincial Legislation, 1867-1895, p. 62.)

The legislation in question, even though confiscation of property without compensation and so an abuse of legislative power, does not fall within any of the aforesaid enumerations.

For these reasons the undersigned, although compelled to report to Your Excellency strong disapproval of the policy of the statute, recommends that it be not disallowed but be left to such operation as may lawfully be given to it.

Chapter 23, intituled "The Statute Law Amendment Act, 1907."

Section 8 of this Act effects an amendment of the Marriage Act with regard to declarations of nullity of marriage in certain cases. The validity of this amendment is, in the opinion of the undersigned, questionable, but, inasmuch as it is in form simply a provision conferring jurisdiction upon the High Court of Justice, any question that may be raised as to the enacting authority of the legislature would necessarily come before the court for determination, and the undersigned does not therefore consider it incumbent upon him to discuss the question here.

Chapter 37, intituled "An Act respecting Certain Railway and other Corporations."

By this Act the expression "Public Utility" is defined to "mean and include any water-works, gas-works, electric heat, light and power works, telegraph and telephone lines, railways, however operated, street railways and works for the transmission of gas, oil, water or electric power or energy, or any similar work supplying the general public with necessities or conveniences."

By section 2 it is provided that "In case the undertaking of a company or other corporation operating a Public Utility and heretofore or hereafter incorporated under a general or special Act of the Province of Ontario has been since the 19th day of February, 1907, or hereafter shall be, declared by the Parliament of Canada to be a work for the general advantage of Canada, or absorbed by or amalgamated with or controlled or operated by any other company or corporation whose undertaking is or has been declared a work for the general advantage of Canada, or which is not subject to the legislative control of Ontario, the Lieutenant Governor in Council may by Order in Council declare that all or any of the powers, rights, privileges and franchises conferred upon such first-mentioned company or corporation by letters patent, or by any general or special Act of Ontario shall be forfeited and thereupon all such powers, rights, privileges and franchises so declared to be forfeited shall cease and determine and every municipal by-law passed and every agreement entered into with any municipal corporation authorizing such company or corporation to carry on business or granting any right, privilege or franchise thereto shall also thereupon become void and be of no effect and such company or corporation shall forfeit all claim to any bonus or other aid granted by any municipal corporation or by the Legislature of Ontario. Provided that nothing in this section contained shall affect the validity of any debentures issued by a municipal corporation for payment of any

such bonus in the hands of a *bona fide* holder for valuable consideration, nor the claim of any *bona fide* creditor of such company or corporation."

By section 91, paragraph 29, of the British North America Act, the exclusive legislative authority of the Parliament of Canada is declared to extend to such classes of subjects as are expressly excepted in the enumeration of classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces, and by section 92, paragraph 10—(which section contains the enumeration aforesaid)—among the classes of subjects expressly excepted are such local works, "as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces."

It is plain therefore that local works such as are by the said Chapter 37 included in the expression "Public Utility" fall within the exclusive legislative authority of the Parliament of Canada if, and when, declared by Parliament to be for the general advantage of Canada.

The Parliament of Canada has the sole right to make this declaration and is the sole judge of the circumstances which justify it. The statute now in question is an attempt to control or affect by provincial authority the exercise of these exclusive powers of the Dominion Parliament, and is therefore plainly incompetent. The statute seems in fact to have no other object than to assert provincial legislative authority over a subject which under the British North America Act is within the exclusive jurisdiction of the Parliament of Canada.

The British North America Act has in terms assigned to the Dominion Parliament the uncontrolled discretion to determine what works are for the general advantage of Canada. By the statute in question the Legislature of Ontario assumes to confer upon the Government of that Province the power to substitute its discretion in the premises and to destroy any Ontario company with regard to which Parliament may see fit to make such declaration.

It might well be that Parliament would be influenced in executing its power to declare the undertaking of a company a work for the general advantage of Canada by reason of the company possessing powers, rights, privileges and franchises conferred upon it by letters patent or by general or special Act of Ontario, or by reason possibly of municipal by-laws, or agreements with a municipality, authorizing the company to carry on business or granting rights, privileges or franchises, and it is impossible to suppose that these could be at will of a Provincial Government forfeited or taken away in any case for no other cause than that Parliament had seen fit to exercise the jurisdiction conferred upon it by the British North America Act.

From the time when the undertaking and works of any company have been declared by Parliament to be for the general advantage of Canada such company, and its undertaking and works become just as much subject to the *exclusive* legislative authority of Parliament, and just as completely withdrawn from the legislative authority of the *local* legislature, as if these undertakings and works had been expressly enumerated in section 91.

Accordingly if it were possible that the Provincial Statute in question could ever be of any effect, action could never be taken under it by the Lieutenant Governor in Council till after the Company to be struck at had been completely withdrawn from Provincial jurisdiction.

Necessarily such action then would be wholly inoperative and the enactment is therefore the merest *brutum fulmen*.

It can scarcely be imagined that any attempt to act under its provisions would ever be made and it is very certain that such attempt if ever made would be set at naught by the courts.

In discussing, in 1899, similar clauses in Provincial Statutes of British Columbia incorporating certain companies, the Hon. David Mills further pointed out (post p.) that in any event Parliament could at once re-enact and confirm in each

case the very provisions the Lieutenant Governor by Order in Council had declared were to cease and determine.

The legislation is so plainly ineffective and harmless that it does not in the opinion of the undersigned call for any action by Your Excellency or for further notice.

Chapter 49, intituled "An Act respecting the Game, Fur-bearing Animals and Fisheries of Ontario."

Section 26 authorizing the Lieutenant Governor to make regulations for protecting the fisheries, as to the terms and conditions upon which fish may be taken, as to preventing wasteful or excessive catches, as to the number, size and weight of any species of fish that may be caught or sold, and as to the taking of frogs, is an enactment for the regulation of the fisheries and incompetent to the legislature of Ontario.

While it is competent to the local authorities to raise revenue from the fisheries by way of license fees, they have, in the opinion of the undersigned, no authority, by way of license or special license, to control or regulate the manner or extent of fishing, and in so far therefore as sections 26, 27, 28 and 29 are intended to authorize the government of the province to exercise such regulation or control they are *ultra vires*.

The Act contains some other questionable provisions, but upon reference of the matter to the Department of Marine and Fisheries that department does not raise any practical objection to any of the enactments other than those above specially mentioned.

The incapacity of a local legislature to enact fishery regulations is, however, so clearly and definitely established that these provisions now in question seem unlikely to do any harm, and since there is now no time to correspond with the Government of Ontario upon the subject, the undersigned does not, in view of the many useful and unquestionable provisions which this Act contains recommend disallowance. He does recommend however, that the above observations with regard to the said statute be specially called to the attention of the local Government, with a suggestion that legislation should be promoted to amend the statute by striking out these *ultra vires* provisions, which otherwise may perhaps in some cases prove misleading.

The undersigned recommends that the statutes of the said session not especially mentioned in this report be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government, and also that the Solicitors of the Florence Mining Company be furnished with a copy of this report, if approved, so far as relates to the said Chapter 15.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

8 EDWARD VII, 1908

(Approved 21 November, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 30th September, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of the Province of Ontario, passed in the eighth year of His Majesty's reign, 1908; received by the Secretary of State for Canada on 25th and 30th April last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned would observe, however, as to Chapter 127, intituled "An Act to incorporate The Iron Range Railway Company" that the statute professes to empower this Company to construct and operate a railway from a point in Ontario to the Manitoba Boundary and to the International Boundary between Ontario and Minnesota, thus connecting the Province of Ontario with the Province of Manitoba and with the United States. It is very questionable therefore, whether the proposed railway can be regarded as a local work or such a work as in view of paragraph 10 of section 92 of the British North America Act a local legislature may authorize. This question may, however, be conveniently determined by the courts, and the undersigned therefore does not recommend disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

From Lord Crewe to Lord Grey.

Downing Street, 3rd July, 1908.

Canada.
No. 392.

MY LORD,—With reference to Sir C. Fitzpatrick's despatch No. 251 of the 24th of July, 1906, I have the honour to transmit to you, to be laid before your Ministers, copy of a letter from the Institute of Chartered Accountants on the subject of the provisions of the Ontario Act (8 Edw. VII C. 42) to revise and amend the Chartered Accountants' Act 1883 of that Province.

2. It will be seen that the Institute takes exception to the fact that under the new Act members of the Institute while not forbidden to practice (section 16) are forbidden to use the initials F.C.A. or C.A., unless they become members of the Institute (section 18).

3. Your Ministers are already aware from the correspondence in the case of the British Columbia Act of 1905, of the view held by His Majesty's Government on the matter, and I need only add that I concur fully in the view expressed by my predecessor in a despatch of the 19th of March, 1906, to the Governor of New South Wales "that any provision which empowers Fellows and Members of such bodies to assume the titles and use the initials conferred on Fellows and Associates of the English Institute, by Royal Charter, would lead to inconvenience and misunderstanding both here and in Australia, and would give the members of the English Institute serious ground for complaint."

4. I would also inform your Ministers that in 1906 the Parliament of Newfoundland passed legislation to remove the ground for a similar complaint made in respect of a Newfoundland Act of 1906, and I would be grateful if they would consider whether the provincial legislatures which have passed acts of this kind might not be invited to amend them so as at least not to penalise the use by a member of the British Chartered Institute of the initials which he is entitled by Royal Charter to employ. I should also be glad if any possible steps could be taken to secure that similar legislation should not take place in the other Provinces.

5. In any case I presume that the Government of Ontario will take steps to secure that members of the Institute of Chartered Accountants shall be admitted as members of the Ontario Institute under section 9 of the Act.

I have, etc.,
CREWE.

INSTITUTE OF CHARTERED ACCOUNTANTS,

MOORGATE PLACE, E.C., LONDON, 12 June, 1908.

SIR.—I have the honour to bring to your notice the accompanying Act recently passed by the Legislative Assembly of the Province of Ontario, and at the same time to refer you to some correspondence which took place with your Department in the years 1905 and 1906.

The Act in question is one to revise and amend the Chartered Accountants' Act passed by the Legislative Assembly above referred to in the year 1883, under which the Institute of Chartered Accountants of Ontario was incorporated.

It is difficult to understand why that institute was allowed to adopt the name of "The Institute of Chartered Accountants" seeing that it had no Charter of a character to justify such a title (unless the Act can be called a Charter of incorporation), but the amending Act raises a question of wide importance to members of this Institute inasmuch as by section 13, it debars a member of this Institute from describing himself in the Province as a "Chartered Accountant," or using the initials "F.C.A." or "A.C.A.", even though he were to add words shewing that it is the English Institute of which he is a member—description and initials which he is expressly authorized to use by the Charter granted to this Institute by the Crown.

I would in particular draw your attention to a letter dated the 19th March, 1906, addressed by the Earl of Elgin when Secretary of State for the Colonies to the Governor of New South Wales, in which His Lordship used the following words, viz:—"That in any Act incorporating bodies of Accountants the use of the title 'Chartered' appears inappropriate and that any provision which empowers Fellows and Members of such bodies to assume the titles and use the initials conferred on Fellows and Associates of the English Institute, by Royal Charter, would lead to inconvenience and misunderstanding both here and in Australia, and would give the members of the English Institute serious ground for complaint."

The Council of the Institute believe that in promoting the recent act no hostility was intended to be displayed towards the members of this Institute, but it does and will operate to their disadvantage and they feel it their duty to protest against it and to urge that in the Bye-Laws which are in course of being framed under its conditions and submitted for approval to the Lieutenant Governor of the Province of Ontario, specific protection and consideration should be given to members of this Institute, which, although not so old as the Institutes of Chartered Accountants of Edinburgh, Glasgow and Aberdeen is admittedly (by reason of the number and standing of its members) the leading Institute of Accountants incorporated by Royal Charter.

I should feel glad if I might be given an opportunity of discussing this matter with one of the Permanent officials of your Department. New Bye-Laws are at this time being submitted to the Lieutenant Governor for confirmation and the subject is consequently most pressing.

I am, etc.,

GEORGE COLVILLE,

Secretary.

THE UNDER SECRETARY OF STATE,
COLONIAL OFFICE.

(Transmitted to the Governor General by the Secretary of State for the Colonies, 16 July, 1908)

INSTITUTE OF CHARTERED ACCOUNTANTS,

MOORGATE PLACE, LONDON, E.C., 7th July, 1908.

SIR.—In further reference to my letter of the 12th ultimo and your reply of the 3rd instant I do not think it would be unreasonable of me if I drew your attention

to the enclosed Coat-of-Arms of the Ontario Institute, which came into my hands this morning, and ask you to compare it with our own, of which I enclose a copy.

We received a grant of the Arms in question from the Office of Heralds two years before the Ontario Institute was incorporated, and I think this is evidence of the deliberate intention of this Institute at any rate to appropriate our name, initials and other methods of distinction in every way they can.

I am, etc.,

GEORGE COLVILLE,

Secretary.

THE UNDER SECRETARY OF STATE,
COLONIAL OFFICE, S.W.

ONTARIO

GOVERNMENT HOUSE,

TORONTO, October 9th, 1908.

SIR,—I have the honour to refer to your despatch of the 6th of August last, No. W.S. 1555, upon the subject of the Ontario Act, 8 Edward VII, Cap. 42, to revise and amend the Chartered Accountants Act, and to enclose to you a copy of a letter which has been received by my provincial Secretary from the Registrar of the Institute of Chartered Accountants of Ontario, containing the views of that Association upon the subject. Upon receipt of a reply the matter will receive further consideration.

I have the honour to be, Sir,

Your obedient servant,

J. M. GIBSON,

Lieutenant-Governor.

The Honourable,
The Secretary of State,
Ottawa, Ont.

TORONTO, September 18th, 1908.

The Honourable
The Assistant Provincial Secretary of Ontario,
Parliament Buildings, Toronto,

SIR,—With further reference to your two letters of the 13th August, which I have already had the honour to acknowledge, the Council of this Institute desire to point out that the Institute of Chartered Accountants in England and Wales was represented by Counsel at the various stages when the Bill was being considered by the Legislature, and certain amendments to the Bill were agreed to in consequence of representations then made.

Following the passing of the Act by the Legislature of Ontario the Council framed a set of By-laws, but before enacting the same, placed copies in the hands of Counsel for the English Institute and other bodies likely to be interested. As the result of the submission of these proposed By-laws to the English Institute, certain amendments were suggested for the consideration of the Council of this Institute and were forthwith adopted. The Council has since been officially informed that the By-laws of the Institute as now passed, are satisfactory to the English Institute.

The Council desire further to state that the standing of every member of the English Institute who desires to practice in Ontario will be suitably recognized if he applies to this Institute for membership. It is pointed out, however, that there are

in this province, men styling themselves Chartered Accountants who were at one time members of the English Institute, but who, for reasons which may be creditable or otherwise to them, have ceased to be members, and are therefore not entitled to so style themselves. The Council believe that inasmuch as the designation of Chartered Accountant has been valuable in Ontario entirely by reason of the unremitting care and judgment exercised by this Institute during the past twenty-five years in professional matters, it should be the first and paramount duty of every member of the English Institute who may contemplate establishing himself in practise as a Chartered Accountant in Ontario to identify himself with this Institute and contribute his share towards the legitimate expense of conserving professional interests in this Province.

The Council beg leave to point out that the Charter or By-laws of the English Institute contain no provision whatever whereby a duly qualified member of this Institute may acquire a legal standing as a Chartered Accountant in England and Wales, and it must therefore be obvious that if any ground of complaint exists, it cannot be taken by the English Institute or any member of the said Institute.

The attention of the Council having been directed to the similarity between the Coat of Arms of this Institute and the Coat of Arms of the Institute in England and Wales, it is recognized that there has been inadvertence on the part of the first Council of this Institute by whom the Coat of Arms was adopted, and the use of any Coat of Arms which appears to afford grounds for the criticism offered by the English Institute, will be no longer permitted. The Council deprecate the use by the English Institute of the language contained in the last paragraph of its letter of the 7th July addressed to the Colonial Office, which probably arises from a grave misconception by that body of its jurisdiction and privileges outside of England and Wales. It may be pointed out that upon the official correspondence stationery of the English Institute the words "in England and Wales" are now omitted, thereby probably occasioning similar misconception in other quarters. It is not however suggested that the English Institute was actuated by any improper motives.

I am, Sir, your obedient servant,

T. WATSON SIME,
Registrar.

(Approved 23 April 1909.)

DEPARTMENT OF JUSTICE, OTTAWA, 19th April 1909.

To His Excellency the Governor General in Council:

On 30th September last the undersigned reported to Your Excellency in Council that the statutes of Ontario, 1908, might, in his opinion, be left to such operation as they may have. This report was approved by Your Excellency on 21st November. Recently, however, a petition dated 31st ultimo has been received from the Dominion Association of Chartered Accountants praying for the disallowance, upon the grounds set forth in the petition, of Chapter 42 of the said statutes, intituled "An Act to revise and amend the Chartered Accountants' Act".

The petitioners refer to the Dominion Act, 2 Edward VII, Chapter 58, incorporating their Association, alleging that since the incorporation the Association is in active operation, and has a large membership throughout the Dominion, many of its members residing and practising in Ontario.

The petitioners call attention to section 13 of the said Chapter 42, which is as follows:—

"13. No person shall be entitled to take or use the designation of 'Chartered Accountant' of the initials 'F.C.A.,' 'A.C.A.,' or 'C.A.,' either alone

or in combination with any other words, or any name, title or description implying that he is a Chartered Accountant, or any name, title, initials or description implying that he is a certified accountant or an incorporated accountant, unless he is a member of the Institute in good standing and registered as such. Any person using a name, title, initials or description contrary to the provisions of this section shall be liable on summary conviction to a fine not exceeding \$25 for each offence.”;

and they allege, apparently with truth, that the effect of this section is to prohibit the members of the Dominion Association from describing themselves as members of such Association, or as Dominion Chartered Accountants, and from using the aforesaid initials which are descriptive of their membership, and which have, it is alleged, heretofore been used by such members.

A copy of the said petition has been communicated to the Attorney General of Ontario, and in reply the Deputy Attorney General states, by direction, that “when this Act was before the Private Bills Committee, English, Scottish and Dominion Accountants were represented, either personally or by Counsel, and their case was very fully argued. The Attorney General’s recollection is that some sort of compromise was arrived at and that as a consequence sections 9 and 16 were either inserted or modified. Section 9, as you will see, provides that the Council shall by by-law describe the conditions upon which persons who have passed the examination of other corporate bodies having the same or similar objects may be admitted as members of the institute, and these conditions must be reasonable and are subject to annulment by the Lieutenant Governor in Council.

“During the discussion regarding the Act it was stated that the new corporation would gladly admit as members, persons who were accountants in the Old Country or in Canada. It was also understood by those who discussed compromise that section 16 controlled the rest of the Act and would permit these other Chartered Accountants to practise in Ontario, and that unless they resided in or had an office within the province they could use any designation as Accountant, as for instance, ‘Chartered Accountant, England,’ ‘Chartered Accountant, Scotland,’ or as the case might be.

“The Act was further discussed in the House when in Committee of the Whole and the contention of the Chartered Accountants not belonging to Ontario was again put forward. The matter was then delayed and the parties representing different interests met and some changes were made in the bill, probably those above referred to.

“I may add that it was also contended in the Committee that it was a matter over which the province had sole jurisdiction. You will understand from the above that the whole question was carefully and fully considered and it seems strange if there was substantial ground of objection that application for disallowance should not have been made until the 11th hour, or that the parties did not bring the matter up at the present session to get some changes. The Attorney General says there was a large number of the members who inclined favourably to meet the views of British and Canadian Accountants”.

The undersigned entertains no doubt as to the power of the Dominion Parliament to enact the provisions of the statute, 2 Edward VII, Chapter 58, incorporating the Dominion Association of Chartered Accountants, or that the members of the Association have by law the status of members and the right to advertise and describe themselves as such either by the use of the description “Chartered Accountants” or by such abbreviations or initials as may indicate the fact. The said section 13 of the local Act is, therefore, in the opinion of the undersigned, an interference with the legislation of the Dominion.

It is true, as pointed out on behalf of the Attorney General that the petitioners are somewhat late in presenting their application for disallowance. If the Dominion Act of 1902 had been present to the mind of the undersigned at the time the attention

of the local Government would certainly have been called to the matter in connection with the previous report of the undersigned of 30th September last. The undersigned did, however, on 31st ultimo, while the legislature of Ontario was still sitting, communicate to the Attorney General the grounds of complaint as herein stated, and suggested the immediate repeal of the said section 13, or such amendment as would exclude from its operation the Dominion Chartered Accountants. It was stated to the Attorney General that the invalidity of the said section 13 as affecting the Dominion Association seemed plain to the undersigned; that if left to the courts the matter could only arise in summary proceedings; that magistrates would be very likely to consider themselves bound by the strict letter of the statute; that this might give rise to considerable litigation and embarrassment, and hence the desirability of amendment by the legislature. The session closed, however, without any further action taken.

Section 9 to which the Attorney General refers does not affect the operation of section 13; neither does section 16, except in so far as concerns accountants not residing or having an office within the province.

The question presented is thus one of direct conflict between legislation of the Dominion competently enacted and subsequent local legislation, whereby the provincial legislature purports to forbid the use of a description applicable to the petitioners and authorized by Dominion Statute. In the view of the undersigned this cannot properly be permitted, and he therefore recommends the disallowance of the said Chapter 42.

It is perhaps unfortunate that the whole statute has to be disallowed on account of this single objection, but any embarrassment which may be thereby caused to the local society may be readily removed by the local legislature at its next session. Indeed the whole Act may be restored with the exception of the provisions of the said section 13; and the undersigned does not consider that the suspension in the meantime of the valid enactments of this statute is a matter which ought in the circumstances to influence the course which seems to devolve upon Your Excellency in Council.

The undersigned recommends further that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(The Statute was accordingly disallowed on the twenty-third day of April, 1909.)

9 EDWARD VII, 1909

(Approved 19 October 1909.)

DEPARTMENT OF JUSTICE, OTTAWA, 18th October, 1909.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the ninth year of His Majesty's reign, 1909, and received by the Secretary of State for Canada on the 21st of April, 1909; and he is of opinion that these may be left to such operation as they may have, except the two statutes hereinafter mentioned.

Chapter 12, intituled "An Act to amend and consolidate the law relating to the payment of Succession Duties".

There has been referred to the undersigned copy of a despatch to your Excellency from the Right Honourable the Secretary of State for the Colonies, dated 3rd of May last, in which Lord Crewe states that his attention has been called to the provisions of

Bill 219 of the Legislative Assembly of Ontario relating to Succession Duties. This is presumably the Bill which subsequently became the said Chapter 12. Lord Crewe states that it appears from sections 5, 7, 8 and 9 of the Bill, that it is still proposed to levy duties on property passing on death which is not locally situate in the Province, and in this connection he invites attention to the fact that the judicial committee of the Privy Council have held that the powers of the Provincial Legislatures do not extend to raising any tax on property locally situate outside the Province. Lord Crewe suggests therefore, that your Excellency's Ministers should bring the fact to the notice of the Ontario Government in order that the proposed legislation may be so amended as not to conflict with the rule laid down by the judicial committee.

The undersigned accordingly recommends that the Lieutenant Governor of Ontario be requested to lay this matter before his advisers so that they may consider and inform your Excellency's Government within the time limited for disallowance whether amendments as suggested by Lord Crewe will be made at the next session of the Legislature, or what reply they desire to submit in connection with this matter.

Chapter 19 intituled "An Act to amend an Act passed in the 7th year of His Majesty's Reign, Chapter 19, intituled "An Act to provide for the transmission of Electrical Power to Municipalities, to validate certain contracts entered into with the Hydro-Electric Power Commission of Ontario, and for other purposes."

There are many petitions before the undersigned praying for the disallowance of this Act. These have been referred to the Lieutenant Governor for the report of his Government, and your Excellency's Government is awaiting a reply. This Act is therefore reserved for further consideration, but the undersigned recommends that the Lieutenant Governor be asked to expedite a reply to the previous despatches.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 15 April 1910)

DEPARTMENT OF JUSTICE, OTTAWA, 29th March, 1910.

To ~~His~~ *His* Excellency the Governor General in Council:

The undersigned, referring to his report of 18th October last, approved by Your Excellency in Council on the following day, has the honour to report that he has had under further consideration Chapter 19 of the Statutes of Ontario, 1909, intituled

"An Act to amend an Act passed in the 7th year of His Majesty's Reign, Chaptered 19, intituled 'An Act to provide for the transmission of Electrical Power to Municipalities,' to validate certain contracts entered into with the Hydro-Electric Commission of Ontario, and for other purposes."

This statute, as appears by its title and preamble is an amending Act.

By Chapter 15 of the Ontario Acts, 1906, intituled, "An Act to provide for the Transmission of Electrical Power to Municipalities" the Hydro-Electric Power Commission of Ontario is constituted with powers very similar to those contained in Chapter 19 of the Acts of 1907, by which the said Act of 1906 was repealed, subject to the proviso that any contract which may have been entered into under the authority of the repealed Act may still be entered into with the same effect and in the same manner as if the said Chapter 15 of 1906 had not been repealed.

By Chapter 19 of the Acts of Ontario, 1907, intituled "An Act to provide for the transmission of electric power to Municipalities," it is provided that the Lieutenant Governor in Council may appoint a Commission of three persons, two of whom

may be members, and one of whom shall be a member of the Executive Council of Ontario, the Commission to be a body corporate under the name of the Hydro-Electric Power Commission of Ontario. The object of this Commission is the supply to municipalities in Ontario of electrical power or energy for the uses of the municipalities and their inhabitants.

The Commission is empowered to acquire, lease or expropriate the necessary properties, water powers, etc., and to contract with any corporation or persons generating, transmitting or distributing electrical power or energy to supply electric power or energy to the Commission.

Any municipality may apply to the Commission for the transmission of electric power or energy for the use of the municipality and its inhabitants for lighting, heating and power purposes, and the Commission shall thereupon furnish to the municipality a statement of the maximum price per horse-power at which the electric power or energy may be supplied at the point of its development or of its delivery to the Commission, and an estimate of the cost of constructing or providing a transmission line by means of which the electric power or energy required by the municipality is to be supplied, and may furnish such plans, specifications and other information as the Commission may deem advisable. The municipality is thereupon authorized to enter into a provisional contract with the Commission for the supply of such electrical power or energy.

The provisional contract is not to be binding until a by-law approving the same has been submitted to and has received assent, in accordance with the provisions of the Consolidated Municipal Act, 1903, of the electors of the municipality.

After the provisional contract has received the assent of the electors and has been executed by the municipal corporation and approved by the Lieutenant Governor in Council the Commission may proceed to carry out and execute the same.

By Chapter 19 of the Ontario Acts of 1909, now under consideration, it is recited that in intended pursuance of the aforesaid Acts, Chapter 15 of 1906, and Chapter 19 of 1907, a contract in the form set out in Schedule A to the Act has been executed by the Councils of all the municipalities (of which there are 15) therein mentioned, except Hamilton, Brantford and Galt; that Galt has approved and authorized the execution of the contract; that it was contemplated that Hamilton and Brantford would also execute it, but that they have not yet done so; that owing to unforeseen causes it may become impossible to supply power by the 19th December, 1909, as provided in the contract; that doubts have arisen as to the validity and binding character of the contract, and as to the authority of the councils of the municipalities to authorize and direct the execution thereof; that the corporations which have executed the contract, and the Corporation of Galt, are desirous to have the benefits thereof made available to them without delay, and that enjoyment of such benefits should not be postponed by unnecessary and vexatious litigation; that the Corporations of Stratford and Hespeler have applied to vary the schedule of the said contract as in the Act set forth; that the Corporation of Ingersoll has applied to be added as party to the contract, and that it is expedient to remove such doubts and to validate the contract as varied in the manner provided by the Act.

The Act proceeds to provide that the contract shall be varied in several particulars.

It is provided that the names of Hamilton and Brantford shall be stricken out of the contract; that the Corporation of the Town of Ingersoll shall be added as a party of the second part, and that certain changes shall be made in the schedule of the contract as to Stratford and Hespeler.

It is provided, moreover, that the following words shall be added to the eleventh paragraph of the contract,—“No power shall be supplied by any municipal corporation to any railway or distributing company or other corporation or person without the written consent of the Commission.”

It is provided further that, notwithstanding any provision or any by-law of the municipal corporations parties to the contract to the contrary, the contract as so varied shall be valid and binding according to the terms thereof upon the said corporations.

By Section 4 of the Act it is enacted that the validity of the said contract as so varied shall not be open to question, and shall not be called in question on any grounds whatever in any court, but shall be held and adjudged to be valid and binding on all the said corporations and each of them according to the terms thereof as so varied, and shall be given effect to accordingly.

By Section 5 it is declared that the said contract as so varied shall be treated and conclusively deemed to have been executed by the Town of Galt.

By Section 6 it is further declared that the said contract as so varied shall be conclusively deemed to be a contract executed by the said corporations within the meaning of the said recited Acts, and that the Commission may carry out and execute the same, and shall have power and authority to do all acts necessary for that purpose, and that it shall not be necessary that the said contract as so varied shall be approved by the Lieutenant Governor in Council.

By Section 7 it is declared that the said corporations and each of them shall be conclusively deemed to have entered into a contract with the Commission within the meaning of the said recited Acts, and to be entitled to exercise all the powers mentioned in the said Acts which are thereby conferred upon a corporation which has entered into such a contract.

Section 8, as enacted by the said Chapter 19 of 1909, is as follows:—

“Every action which has been heretofore brought and is now pending wherein the validity of the said contract or any by-law passed or purporting to have been passed authorizing the execution thereof by any of the Corporations hereinbefore mentioned is attacked or called in question, or calling in question the jurisdiction, power or authority of the Commission or of any Municipal Corporation or of the Councils thereof, or of any or either of them, to exercise any power or to do any of the acts which the said recited Acts authorize to be exercised or done by the Commission, or by a Municipal Corporation or by the Council thereof, by whomsoever such action is brought, shall be and the same is hereby forever stayed.”

The undersigned is advised, however, that the said Section 8 has been amended at the recent session of the legislature by adding thereto the following words:—

“so far as such action seeks to declare invalid or set aside any contract or by-law in this section mentioned or referred to, but the plaintiff in any such action shall nevertheless be at liberty to continue his action so as to claim the damages (if any) which he, in the judgment of the Court, may personally and individually be entitled to recover, and for this purpose, he may amend his claim and statement of claim, confining his demand to such damages only.”

It is provided, Section 9, that the contract between the Commission and the F. H. McGuigan Construction Company is legal and valid, and that the Commission may carry out and execute the said contract, and in addition to all other powers shall have power and authority to do all acts necessary for the purposes of the said contract.

The McGuigan contract is not, however, scheduled to the Act or otherwise identified.

The Act contains several other provisions conferring powers upon the Commission or the municipalities or otherwise affecting the powers of the Commission or the municipalities, but these have not been made the subject of complaint.

A great many petitions and applications have been submitted to Your Excellency's Government seeking disallowance of the said Act upon the ground that it is *ultra vires*, or that it unduly interferes with vested rights and the obligations of con-

tract, or that it is inexpedient legislation in the general public interest. A list of the various petitioners or complainants is hereto attached.

Counsel representing some of the applicants for disallowance have also been heard before a Committee of the Privy Council.

Copies of the various applications and petitions have been submitted by Your Excellency's Government to the Government of Ontario for consideration and reply, and a memorandum in reply upholding the legislation has been submitted by the local Government. The case is, therefore, now ripe for consideration by Your Excellency in Council.

The undersigned has carefully considered this legislation and the various objections urged against it. The ground that the Act is *ultra vires* of the legislature, although taken by some of the petitions and to some extent urged by counsel advocating the disallowance of the Act, is, in the opinion of the undersigned, quite untenable. The Act clearly relates solely to municipal institutions in the province, property and civil rights in the province or matters of a merely local or private nature in the province, all of which are subjects declared by Section 92 of the British North America Act, 1867, to be within the exclusive authority of the provincial legislatures.

In answer to the several petitions and complaints which have been submitted the Government of Ontario refers to a number of precedents to be found in the opinions of the Ministers of Justice upon provincial legislation submitted to the Governor General in Council, wherein the view is expressed that the Governor General cannot consistently exercise the power of disallowance upon any ground affecting the justice or expediency of a local statute in relation to matters constitutionally committed to the legislatures, and this view has been very recently reaffirmed by Your Excellency's Government upon a report of the undersigned in relation to an Ontario statute of so late a date as 1907. Many cases might be quoted in addition to those so referred to in which the Governor General has declined to act upon such reasons as affording ground for disallowance. The undersigned, therefore, considers it impossible in accordance with both practice and principle that Your Excellency's Government should sit in judgment upon the propriety of this measure.

Lord Watson in *Liquidators of the Maritime Bank of Canada vs. Receiver General of New Brunswick*, 1892, A.C. 441-2, referring to the British North America Act, 1867, said:—

"The object of the Act was neither to weld the provinces into one nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the provinces all powers, executive and legislative, and all public property and revenues which had previously belonged to the provinces, so that the Dominion Government should be vested with such of these powers, property and revenues as were necessary for the due performance of its constitutional functions, and that the remainder should be retained by the provinces for the purposes of provincial government. But, in so far as regards those matters which, by s. 92, are specially reserved for provincial legislation, the legislation of each province continues to be free from the control of the Dominion and as supreme as it was before the passing of the Act."

In *Hodge v. The Queen*, 9 A.C. 131-2, Sir Barnes Peacock, delivering the opinion of the Board, said:—

"When the British North America Act enacted that there should be a legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in Section 92, it conferred powers not in

any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by Section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subject and area, the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion."

Lord Herschell, L.C. in *Brophy vs. Attorney General of Manitoba*, 1895 A.C., 222, said:—

"In relation to the subjects specified in Section 92 of the British North America Act, and not falling within those set forth in Section 91, the exclusive powers of the provincial legislatures may be said to be absolute."

Again in the *Fisheries Case*, 1898, A.C. 713, the same learned Lord said:—

"The suggestion that the power might be abused so as to amount to a practical confiscation of property, does not warrant the imposition by the courts of any limit upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject-matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is an appeal to those by whom the legislature is elected."

From these extracts from judgments of the Judicial Committee (and many might be added to similar effect) it is apparent that the authority of the provincial legislatures in matters within their exclusive legislative control is not in anywise diminished by the operation of the British North America Acts. The undersigned conceives it impossible to suppose that previously to the Union of the provinces Her Majesty's Government would, under the corresponding powers of Section 38 of the Act for the Union of the two provinces of Canada (3 and 4 Vic., Cap. 35), have disallowed an Act of the province for reasons such as those now urged for the disallowance of the Ontario Power Commission Amendment Act, 1909; and the undersigned is not aware of any reason why the power of disallowance should in present circumstances be exercised more liberally, or upon grounds which would not have previously availed. Moreover, while Your Excellency's Government in the exercise of the power of disallowance must in many cases proceed upon grounds different from those which influence courts of justice in the determination of the validity of a statute, yet, in the opinion of the undersigned, a suggestion of the abuse of power, even so as to amount to practical confiscation of property, or that the exercise of a power has been unwise or indiscreet, should appeal to Your Excellency's Government with no more effect than it does to the ordinary tribunals, and the remedy in such cases is, in the one case as in the other, in the words of Lord Herschell, an appeal to those by whom the legislature is elected.

The undersigned does not intend by the foregoing observations to express any view either favourable or unfavourable to the merits of the Act in question. The policy of the legislation, as well as the manner in which it is worked out by the various provisions of the statute, are within the sole responsibility of the local legislature.

It has been strongly urged by those attacking the legislation that the effect of it must necessarily be to impair the credit of Canada as a whole, and that it therefore affects injuriously the interests of the Dominion generally. Whether or not this is so must be matter of opinion, and the undersigned is far from being satisfied that any such injurious effect has, at any rate as yet, been shown. But in any event the injury alleged or apprehended, if it has already taken place, or should hereafter appear, would seem to be the result of the general scheme for furnishing through the Hydro-Electric Power Commission electrical power or energy in competition with the business of existing companies rather than any natural consequence of the amending

legislation which is the subject of this report; and the provincial legislation establishing the Hydro-Electric Power Commission is not at the present time a matter of consideration.

The undersigned recommends, therefore, that the said Act, Chapter 19, be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

10 EDWARD VII, 1910

(Approved 11 January, 1911)

DEPARTMENT OF JUSTICE, OTTAWA, 13th December, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the Tenth year of His late Majesty's reign (1910), and received by the Secretary of State for Canada on 26th March, 1910, and he is of opinion that these statutes may, subject to the following comments, be left to such operation as they may have.

Many of the said Acts appear to be re-enactments or consolidations of the existing statutes.

Attention may be directed to Chapter 3, intituled "An Act respecting the Lieutenant Governor and his Deputies," in view of the constitutional incapacity of the local legislature to amend the constitution of the province in respect of the office of Lieutenant Governor.

Chapter 25, intituled "An Act respecting the Supreme Court of Canada and the Exchequer Court of Canada," professes by section 3 to declare that certain judgments of the Court of Appeal for Ontario shall be final. It is, of course, clear that the legislature has no power to diminish or affect the right of appeal to the Supreme Court conferred by the Dominion Parliament.

As to Chapter 49, intituled "An Act respecting the rights of Aliens in relation to Real Property," there may, in the opinion of the undersigned, be some question whether its provisions declaring the capacity of aliens can stand consistently with the exclusive powers of Parliament to legislate with regard to aliens.

Chapter 105, intituled "An Act respecting Industrial Schools," section 11, provides that where under the authority of any statute of Ontario, or of any other statute or law of Canada, any person is convicted of an offence punishable by imprisonment, and the judge before whom he is convicted is of opinion that such offender is under the age of sixteen years, the judge may make an order in writing that the person so convicted shall be sent to an industrial school. This provision appears to the undersigned *ultra vires* in so far as it authorizes an industrial school as a place of confinement for persons convicted of criminal offences within the jurisdiction of the Parliament of Canada. This section is derived from section 14 of Chapter 304 of the Revised Statutes of Ontario, 1897, and in its original form was probably unobjectionable since it was then expressly limited to cases of conviction under local statutes or to matters within the authority of the legislature of the Province. It seems desirable therefore that the section should be amended so as to limit the section to its original scope. The undersigned recommends that the Government of the Province be requested to consider this suggestion, anticipating that the Government will be disposed to promote an amendment to the section to confine it within its legitimate sphere.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 24 March, 1911.)

DEPARTMENT OF JUSTICE, OTTAWA, March 23, 1911.

To His Excellency the Governor General in Council:

The undersigned has had under further consideration Chapter 79 of the Statutes of Ontario of 1910, intituled "An Act to Revise and Amend the Chartered Accountants' Act," upon reference of a despatch from the Right Honourable the principal Secretary of State for the Colonies, of 16th February last.

Mr. Harcourt by the said despatch refers to Bill No. 76 of the present session of the Legislature of Ontario, intituled "An Act respecting Chartered Accountants," which is a mere revision of the present Act. He observes that Section 17 of the Bill, which corresponds to Section 13 of the said Act, imposes penalties upon persons who use certain titles unless they are registered as members of the Institute of Chartered Accountants of Ontario, and he states that he presumes that Your Excellency's Ministers will be prepared to take any necessary steps to prevent the measure becoming operative in this form. Mr. Harcourt states further that he has not learned what action was taken by Your Excellency's Government in respect of the Act of 1910.

By despatch of 31st May, 1910, Lord Crewe transmitted copy of a letter of 19th May, 1910, from Mr. George Colville, Secretary of the English Institute of Chartered Accountants, protesting against the injustice done to members of the English Institute who, by Royal charter, are entitled to call themselves chartered accountants, in disqualifying them (under penalties) within Ontario from the use of their appropriate and lawful description. It appears by the correspondence that Mr. Colville was informed in reply that Lord Crewe presumed that the Act would be disallowed by Your Excellency.

The undersigned wrote the Attorney General of Ontario, on the 14th instant, enclosing copies of the correspondence and suggesting that the Act should be amended at the present Session, so as to remove the ground of complaint. Mr. Foy apparently referred to the Institute of Chartered Accountants of Ontario, and their Secretary has made representations and submitted a written statement to the undersigned wherein he urges that the legislation, especially in view of the regulations made under it, is not really unsatisfactory to the English Institute.

Since, however, the time for disallowance will expire on the 25th instant, there is no time for further correspondence with the Colonial Office upon the subject.

The undersigned has urged the Attorney General of Ontario, in the circumstances, to propose legislation to avoid the revival of the Act of 1910, in case the Act of 1911 about to be assented to should itself be disallowed. The Attorney General, however, is not inclined to introduce any amendment, and in consequence there appears to be no means of meeting the view of the Colonial Office except disallowance. It would seem that the Ontario Institute cannot be seriously prejudiced by this course, inasmuch as the revised Act is to become law immediately.

There will be ample time within the period limited for the disallowance of the revised Act for correspondence and explanations or arrangements as between the two institutes.

The undersigned therefore recommends that the said Chapter 79 be disallowed, and that a copy of this report, if approved, be transmitted to the Right Honourable

the Secretary of State for the Colonies, to the Lieutenant Governor of Ontario and to the Secretary of the Institute of Chartered Accountants of Ontario at Toronto.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(The statute was accordingly disallowed on the twenty-fourth day of March, 1911.)

DISCRIMINATION AGAINST DOMINION CORPORATIONS

(Approved 12 April, 1911.)

DEPARTMENT OF JUSTICE, OTTAWA, 14th March, 1911.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that in the *Ontario Gazette*, January 14th, 1911, there appeared a Notice of an Order of the Lieutenant-Governor in Council dated 10th January, 1911, amending the Schedule of Fees payable for licenses to extra provincial corporations, the essential part of which is as follows:—

EXTRA PROVINCIAL CORPORATIONS

“Fees for licenses will be the same as the fees charged for the incorporation of companies under the Ontario Companies Act, but will be calculated on the amount of capital authorized to be used in Ontario.”

This is an amendment of an Order in Council of the 2nd December, 1909, the corresponding portion of which is as follows:—

EXTRA PROVINCIAL CORPORATIONS

“Fees for licenses are fixed in each case by Order in Council, depending largely on the amount of capital used in Ontario, calculated on the foregoing table of fees for the incorporation of domestic companies, except in the case of Dominion corporations, which pay either \$25 or \$50. If the company's capital is \$100,000 or less, the fee is \$25.00; if the capital exceeds \$100,000, the fee is \$50.”

It will be noticed that the concluding words of the amending Order are “but the fee will be calculated on the amount of capital authorized to be used in Ontario.”

It is difficult to say what the precise meaning of this wording is, as the mode of authorization of the use of capital in Ontario is not stated. If the amount referred to be that which the license authorized the company to use, Dominion companies and foreign companies are no doubt upon the same footing if this amount is the actual capital used in the province. But if the amount is that authorized by the company's constating instruments, Dominion companies are discriminated against. Dominion companies having their head offices in Ontario are authorized by their charters to use their total capital in the Province of Ontario, although as a matter of fact but a small portion of that capital may be used there. On the other hand, foreign companies may not be authorized by their constating instruments to use any portion of their capital in Ontario, and the amount of the fee will be based upon that part of the capital which is actually used in Ontario. The result would, therefore, be that Dominion companies must always pay on their total capitalization, and foreign companies need only pay on the amount of capital in actual use in Ontario. Indeed, when the head office of a company is situate in Ontario, it would be most difficult to say that any amount less than the total capitalization is

used in Ontario, and it follows that Dominion companies must be discriminated against in favour of companies of another province or foreign countries. Under this Order in Council the license fees payable by companies with small capitalization are almost equal to, and by companies with large capitalization are greater than the fees paid to the Dominion for incorporation.

This is not, however, the main objection to this Order in Council. The Extra Provincial Corporations Act of Ontario, 63 Victoria, Cap. 24, Schedule A, set out the fees chargeable against Dominion Companies, being \$25 where the capital does not exceed \$100,000, and \$50 where the capital is more than that amount. By section 53 of 3 Edward VII, Cap. 7, the Statute Law Amendment Act of 1903, schedules of the Extra Provincial Corporations Act fixing the fees payable on obtaining licenses were repealed, and authority was conferred upon the Lieutenant Governor in Council to fix the amount of such fees.

The following are extracts from a report dated the 20th June, 1904, of Sir Charles Fitzpatrick, at that time Minister of Justice, upon the section of the Ontario Act of 1903 just referred to:—

"Your Excellency may remember that the predecessor of the undersigned, the late Mr. Mills, took exception to the Act of 1900, which is thus amended, on several grounds, one of which was that the legislature ought not to exact fees discriminating between the trading corporations established by Parliament and those established by provincial legislation; and that his objections being concurred in by Your Excellency in Council, and communicated to the Government of Ontario, the Act was at the next following session so amended as to remove the objectionable features to some extent. The amending Act, however, did not do away with the discrimination between Dominion and Provincial companies. This was pointed out by Mr. Mills to the provincial authorities, and on 3rd May, 1901, he reported to Your Excellency in Council that he had informed the Prime Minister of the Province in effect that the Act should be further amended so as either to exempt corporations created by Parliament from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fees required under the Act should be imposed equally upon corporations created by the Dominion and those created by the legislature of Ontario. The Minister went on to state that he considered it impossible to admit consistently with the general interests of Canada the principle of interference with Dominion policy by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and that he apprehended that disallowance was the appropriate remedy in such a case. The Provincial Government had, however, by an amendment already made, gone a considerable way to remove some of the most serious objections to the Act, and he was encouraged to believe that it would at the first opportunity promote further legislation to either exempt Dominion corporations from the statute, or to establish equality with regard to license fees and taxation as between Dominion and provincial companies. He considered, however, that Your Excellency's Government should have a formal assurance of such an intention from the Government at Toronto, and, on his recommendation, a copy of his report, approved by Your Excellency in Council, was transmitted to the Lieutenant Governor of Ontario, with a request that he inform Your Excellency's Government as to whether at the first opportunity for so doing his Government would promote further amendments to the Act in question, as suggested in the report.

"An Order of the Lieutenant Governor in Council was thereupon passed (14th May, 1901), and communicated to Your Excellency's Government, approving of a report of the Prime Minister of the province, in which, after referring

to Mr. Mills' Report, he recommended that any Act of the Legislature under which a discrimination may be exercised against corporations having authority from the Dominion Government should be so amended as to establish equality in regard to 'License fees and taxation between Dominion and Provincial companies,' as suggested by the Minister, and that legislation to that effect should be introduced and carried through at the next session of the legislature.

"No such legislation was passed at the next session of the legislature, and now, by the section above quoted from Chapter 7 of the Statutes of 1903, the Act is made much more open to the objection taken by Mr. Mills in his report of 3rd May, 1901. The fees of \$25 and \$50 under the Act as it stood would probably be claimed by the Province not to be unreasonable, considered merely as a charge in connection with the application for and the issue of the licenses, and they were perhaps not large enough to very grievously burden the companies liable to pay them. Under the amended provision, it is obvious that the fees may be made so large as to constitute a real grievance to companies which have or may obtain Dominion charters, as well as a discrimination between Dominion and provincial companies highly objectionable on other grounds.

"For the reasons stated, the undersigned would think it his duty to recommend the disallowance of Chapter 7 aforesaid, unless the Government of the Province should undertake to promote at the next session of the Legislative Assembly legislation of the character suggested in the report of his predecessor above referred to, that is to say, either exempting corporations created by parliament from the requirement to procure licenses, or providing that the obligation to take out licenses and pay the license fees prescribed shall be imposed equally upon Dominion and provincial corporations. The time for disallowance expires on the 31st July next, and there is not, therefore, a great deal of time left for consideration and negotiation, and the undersigned recommends that a copy of this report, if approved, be sent forthwith to the Lieutenant Governor of the Province, with the request that he inform Your Excellency at the earliest possible time whether his Government will enter into such an undertaking."

The following is an extract from a report of the Honourable J. M. Gibson, at that time Attorney General of Ontario, approved by the Lieutenant Governor in Council of Ontario, in answer to the above report of Sir Charles Fitzpatrick:

"The sole section of this Act (3 Edward VII, cap 7) with which fault is found is section 53, which amends section 18 of the Act respecting the licensing of Extra-Provincial Corporations by striking out the first three paragraphs thereof, and Schedules A and B thereto, inserting in lieu thereof the following words:

"There shall be paid by every corporation requiring a license under this Act such fees as may from time to time be approved of by the Lieutenant Governor in Council."

"Disallowance is suggested unless the Government of this Province shall undertake to promote at the next session of the Legislative Assembly legislation either exempting corporations created by Parliament from the requirement to procure licenses, or providing that the obligation to take out licenses and pay the license fees prescribed shall be imposed equally upon Dominion and provincial corporations.

"No complaint is made that under the provincial legislation unreasonable fees have been exacted in connection with applications by Dominion corporations for the issue of these licenses. But it is suggested that under the amendment of the Session of 1903, section 53 of the Statute Law Amendment Act,

1903, fees might be imposed of so large an amount as to constitute a real grievance to companies having Dominion charters, and that there might be objectionable discrimination between Dominion and provincial companies.

"The section in question is one of sixty-three sections of what has been known as the annual 'Omnibus Act,' which usually contains a considerable number of miscellaneous amendments of the provincial statute law, some of them of minor importance, but not a few of very considerable importance; and it is undoubtedly the case that this particular section was not considered in connection with the despatch of the Honourable the Premier, dated 14th May, 1901, referred to in the report of the Minister of Justice. In fact, the clause was added to the Bill in Committee of the Whole House and adopted as presumably facilitating the practical administration of this particular branch of detail work of the Provincial Secretary's Department.

"As has already been pointed out, many other sections of the Act deal with matters of very great importance. They have been acted under, interests have been created, and conditions have arisen which would be very seriously affected by disallowance of the entire Act, and the undersigned assumes that disallowance could not be confined to a portion of an Act. *No discrimination has taken place under the section objected to, and there need be no apprehension that there will be any discrimination before the next session of the legislature, when the undersigned is of opinion that this section should be repealed, and legislation substituted in the shape of an Act dealing with this subject, and substantially complying with the terms of the despatch of 14th May, 1901, and the undersigned recommends that an undertaking be given to this effect.*"

It will be observed that the Honourable the Attorney General in his report expresses his opinion that the section should be repealed, and legislation substituted specially dealing with the subject, and substantially complying with the terms of the despatch of the 14th May, 1901, and he recommends that an undertaking to that effect be given.

Relying on this undertaking the statute in question was not disallowed. Notwithstanding the undertaking, and the correspondence above referred to, the legislation undertaken to be introduced was not introduced. However, an Order of the Lieutenant Governor in Council was passed fixing the license fee payable by Dominion companies at the sums set out in the repealed sections. While this Order in Council remained in force there was no substantial ground for complaint, although the undertaking of the Government of the Province of Ontario had not been carried out. But the Order in Council now complained of is a realization of the fears expressed by Sir Charles Fitzpatrick in his report, that the fees payable by Dominion companies might be excessively increased, or be so arranged as to discriminate against Dominion Companies.

The undersigned recommends, therefore, that the attention of the Lieutenant Governor of Ontario be directed to this matter, with a request that the necessary legislation be enacted at the present session of the Ontario Legislature to repeal the said section 53 of the Statute Law Amendment Act, 1903, and otherwise to satisfy the undertaking given by the Government of Ontario in the despatch of 4th August, 1904, transmitting copy of the local Order in Council above quoted.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(NOTE.—Such legislation was held to be *ultra vires* by the Privy Council in *Great West Saddlery Co. v. The King* 58 D.L.R. 1 (1921).)

1 GEORGE V, 1911

(Approved 12 February, 1912)

DEPARTMENT OF JUSTICE, OTTAWA, 30th January, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the first year of His Majesty's reign (1911) and received by the Secretary of State for Canada on 1st April last, and he is of opinion that these Acts, except as hereinafter stated, may be left to such operation as they may have, subject to the following remarks:—

Chapter 5—intituled "An Act to amend The Supplementary Revenue Act."

This Act amends the Supplementary Revenue Act by adding certain sections, among others, section 11 (a), which provides that there shall be levied a tax of two cents payable by the transferor in money or stamps for every one hundred dollars or fraction thereof of the par value upon every change of ownership consequent upon the sale, transfer or assignment of shares of debenture stock issued by any corporation or company made or carried into effect in the province. It is, in the opinion of the undersigned, questionable whether such taxation is not indirect.

Also section 11 (c), which provides that any sale, transfer or assignment made through a broker resident in the province not a member of a recognized stock exchange shall be deemed to be made and carried into effect in the province. This provision, in so far as it is intended to affect any sale, transfer or assignment not actually made within the province, seems to be plainly *ultra vires*. The legislature has no authority to tax except within the province, and any sale, transfer or assignment which does not upon proper legal construction take place within the province is not within the authority of the legislature to tax, and cannot of course be brought within such authority by any declaration of the legislature.

Chapter 6—intituled "An Act for the Protection of the Public Interest in the Bed of Navigable Waters."

By section 2 it is enacted as follows:—

"2. Where land bordering on a navigable body of water or stream has been heretofore, or shall hereafter, be granted by the Crown, it shall be presumed, in the absence of any express grant of it, that the bed of such body of water or stream was not intended to pass to the grantee of the land, and the grant shall be construed accordingly and not in accordance with the rules of the English Common Law."

This provision applies to titles generally and it appears to have retroactive intention to revest in the Crown the beds of waters or streams which had been previously granted. No compensation is provided, nor is there any recital in explanation. The undersigned reserves further comment pending communication with the Government of Ontario as hereinafter recommended.

Chapter 48—intituled "An Act respecting Chartered Accountants."

The undersigned anticipating a communication from the Colonial Office or the British Association of Chartered Accounts with respect to this Act reserves consideration of it for the present.

Chapter 66—intituled "An Act respecting Offensive Weapons."

The provisions of this Act appear to relate strictly to the criminal law rather than to any subject of provincial legislation.

The undersigned considers that the objections above mentioned with respect to Chapters 5 and 66 may be conveniently left to be determined by the courts when they arise.

As to Chapter 6, the undersigned recommends, in view of the very exceptional character of the legislation, that inquiry be made of the Lieutenant Governor of Ontario as to the reasons which are thought to justify the statute in its retrospective effect.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

(Approved 19 April, 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd March, 1912.

To His Royal Highness the Governor General in Council:

The undersigned, referring to his report of 30th of January last, approved on 12th February, with respect to Chapter 6 of the Ontario Statutes of 1911, intitled "An Act for the Protection of the Public Interests in the beds of Navigable Waters," has had under consideration the answer of the local Government to the despatch which was sent in accordance with the recommendation of the said report.

It is stated that the Government of Ontario regrets that it is again called upon to defend the right of a provincial legislature within the limits of the subjects and the area prescribed by section 92 of the British North America Act to enact such laws as it may deem expedient. It is said that this right was recognized after full consideration by the Government of Canada in dealing with the Cobalt Lake and Hydro-Electric Power legislation.

Reference is made to the decision of the Judicial Committee of the Privy Council in *Hodge vs. The Queen*, and thereupon a respectful protest is entered on behalf of the Government of Ontario against what is termed "the apparent assumption by the Government of Canada of the right to call upon a provincial legislature to justify to it the policy, expediency, propriety or justice of any law which within the limits as to subjects and area prescribed by section 92 of the British North America Act, and in the exercise of the exclusive sovereignty with which it is invested that legislature has chosen to enact or the constitutional right to disallow such a law because in the opinion of the Government of Canada on its policy, expediency, propriety or justice is open to objection." It is said, moreover, that the existence of such a power in the Government of the Dominion would amount to substituting the opinion of Your Royal Highness's Government for the judgment of the people of Ontario.

The Government of Ontario proceeds, nevertheless, subject to these preliminary remarks, to disclose the reasons which are thought to justify the legislation, and they appear to be based upon the view that the recent judgment of the Court of Appeal of Ontario in *Keewatin vs. Kenora*, 1908, 16 O.L.R., 184, is an erroneous decision which has displaced the law previously recognized by which grants limited upon waters in fact navigable did not, in the absence of expressed intention, extend beyond the dry land along the margin. Numerous cases are cited in which the question is discussed as to whether the rules of the common law are applicable in this country to the great inland lakes and to rivers, such as the St. Lawrence and the Ottawa, and it is urged that the statute is in fact not retroactive but declaratory.

The undersigned does not consider it necessary to discuss the decisions of the courts to which the learned Attorney General refers. It may very well be that there are lakes and rivers in Canada too large for the application of the common law rule. The undersigned is not at present concerned to admit or deny that this is so. What is more certain is that there are many other lakes and rivers in the country, navigable

in fact, which are no larger than those in respect of which the rules of the common law have been developed and established in the motherland, and in respect of which no reasons are stated either by the Attorney General or in the decisions themselves to exclude the operation of the common law.

The statute is expressed to apply to lands bordering on a navigable body of water or stream without any exception, and in view of the very narrow seaboard of the province it is assumed, and is in fact admitted, that the intention of the Act is to affect generally the fresh waters which are navigable.

Whether the law be as contended by the Attorney General, or as determined by the Court of Appeal, there can be no doubt as to the conclusive character of the latest decision of the ultimate provincial court; and, accepting the law as so determined, the second section of the statute operates to divest rights and titles which had been effectually granted by the province. If on the other hand the statute merely declares the existing law, legislation is unnecessary, since it is to be assumed that the Supreme Court of Canada, or the Judicial Committee of the Privy Council, would correct the Court of Appeal when the question comes before one of those superior tribunals.

Reference to the decisions does not, therefore, answer or remove the great cause of exception to the statute that its operation, in so far as it is effective, is concerned only with the project of acquiring vested rights for the Crown without compensation.

The Attorney General has stated nothing in support of the principle of such a proceeding, except by reference to what he terms "the judgment of the people of Ontario as the final arbiters." But such final arbitrament is subject to limitations as are all other local powers under the federal system, and the undersigned humbly apprehends that the local Government in denying to the Government of Your Royal Highness the power to review this enactment as conflicting with sound principles of legislation has overlooked a very important constitutional provision. It cannot be denied that, as held by the Judicial Committee in *Hodge vs. The Queen* and other cases, the legislative powers of the provinces, within their scope and limits as defined by the British North America Acts, are supreme and of a character corresponding to those of the Imperial Parliament. Provincial legislation which exceeds these powers is inoperative; and, while there are cases in which the exercise of the power of disallowance is appropriate and proper to quiet proceedings under invalid statutes, there is always in such cases another remedy by way of appeal to the courts, so that the prerogative of disallowance becomes merely alternative. The courts are bound as individuals by the Acts of a legislature within the sphere of its jurisdiction; and, as has been said by the highest authority, "In so far as they possess legislative jurisdiction, the discretion committed to the parliaments whether of the Dominion or of the provinces, is unfettered. It is the proper function of a court of law to determine what are the limits of the jurisdiction committed to them; but when the point has been settled, courts of law have no right whatever to inquire whether their jurisdiction has been exercised wisely or not." The Attorney General refers to another observation upon the same subject—that of Lord Herschell in the *Fisheries Case*—who said that "The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is an appeal to those by whom the legislature is elected."

These remarks of the Judicial Committee define with precision the situation so far as the courts are concerned and show the futility of any attempt to obtain judicial redress of a grievance founded upon unjust enactments which the legislature has power to make. They are not, however, in anywise concerned with the exercise of Your Royal Highness's prerogative of disallowance; and it is, the undersigned apprehends, not only because legislative powers may be exceeded, but also because they may be abused, that the authority is conferred constitutionally upon the Governor General to disallow measures, which in the public interest, for the one reason or the other, should not be allowed to operate.

In the recent report of the undersigned upon a statute of Alberta, approved by Your Royal Highness on 20th January last, the undersigned, referring to the power of disallowance, stated that he entertained no doubt that "the power is constitutionally capable of exercise, and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes *intra vires* of the legislatures." The undersigned adheres to the opinion so expressed.

The British North America Act, in the words of Lord Hobhouse, "makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor General."

In the humble opinion of the undersigned an occasion is now presented for the consideration of the principles upon which the control to which His Lordship refers may be exercised.

The Dominion in the execution of its powers for the general advantage of Canada has constructed and is now engaged in the construction and maintenance of important canals and waterways in the Province of Ontario. Titles have been acquired and compensation paid or rights to compensation have become vested in respect of many properties which are affected by this statute. Very recently the undersigned has been notified of the intention of the Government of Ontario to institute proceedings with a view to recover compensation or damages from the Dominion in respect of the waters appropriated by the Government for the purposes of these canals and otherwise. It requires no great prevision to see that in such litigation, if it ensue, the enactment now under consideration will be invoked as evidence of the title of Ontario. The project involved in the statute contemplates therefore not merely the divesting of proprietary interests which are recognized by the law as pronounced by the Court of Appeal, but also the transfer of these interests to the Government of the Province, and following upon the Statute is the assertion by Ontario of a claim against the Dominion which, if it be maintainable at all, was formerly represented by private individuals who had received or were entitled to receive the compensation warranted by the value of their respective interests. It may of course be urged that this local statute does not in terms reach and cannot constitutionally affect the Crown in the right of the Dominion; but it is maintained by the Attorney General that the statute is declaratory of the law and not directed against any existing rights. The situation thus raised admits of discussion and argument, but the undersigned does not consider that in the result the statute can have any operation to affect the property or rights of the Dominion, and it may be observed that no individual proprietor has made any complaint.

Numerous cases have occurred in which the Government of the Dominion has considered the propriety of disallowing provincial Acts upon grounds concerned with the quality of provisions admittedly *intra vires*; but the Ministers of Justice have always shown great reluctance, in which the undersigned fully shares, to interfere with Acts deliberately adopted by a legislature within the range of its powers. Nevertheless occasions have arisen, fortunately very rare, in which the Ministers have been constrained to recommend the local Governments to consider amendments as alternative to disallowance, and some of these suggestions have been acted upon favourably, so that cases have thus been accommodated. There are other cases, however, in which it has been necessary to execute the power with which the Governor General is charged; and, in circumstances where the public property or policy of the Dominion might be affected, the instances are less infrequent. But the Attorney General refers to the reports of the predecessor in office of the undersigned with respect to the Cobalt Lake and Hydro-Electric legislation of Ontario, and he seems to regard these reports and the executive action founded on them as an abrogation by the Dominion of the

right to invoke the prerogative of disallowance for a cause not involving constitutional invalidity.

The undersigned cannot acquiesce in this view, nor can he accept these proceedings as impairing the constitutional control with which Your Royal Highness is vested, and which may, the undersigned apprehends, be exercised upon any ground which should, in the opinion of Your Royal Highness's Ministers, make the power effective in the public interest. It is indeed scarcely conceivable that a permanent statutory power can be modified or limited by a mere executive act, and it seems unreasonable that the practice which has had approval from the very beginning of the Union should be thus proscribed.

The undersigned perceives that his predecessor in office stated with considerable emphasis the view that the Governor General should, under a proper administration of his prerogative, be equally powerless with the courts to remedy an abuse of legislative power, but the undersigned is unable to follow the reasoning which led to this conclusion; and, while he has the same desire as any other to avoid action which would infringe the autonomy of the provinces, or embarrass them in the execution of any legislative policy which they may within their powers adopt, he nevertheless considers it still more his duty to see that these powers are not extended beyond their constitutional limits, and that the authority reserved to Your Royal Highness in the common interest is duly maintained.

The undersigned ventures to submit the above remarks with regard to the recent reports of his predecessor not only because the Attorney General relies upon these reports, but also because the undersigned entertains a strong conviction that it is not intended by the British North America Acts to impose any restriction upon the exercise of the powers of the Governor General in respect of disallowance, and because the previous practice shows that it was not considered that invalidity of a statute was a condition of the power to disallow it.

The undersigned upon careful consideration has concluded that this statute can have no effect as to the Crown or its property in the right of the Dominion. He considers that in the absence of any objection on behalf of the riparian proprietors of the province it may be justifiably presumed that private interests are not regarded as seriously prejudiced. Moreover, the Government of Ontario appears to attach great importance to the legislative reversal of the Court of Appeal in the case of *Keewatin vs. Kenora*, and may be right in the contention that it is desirable in the public interest of the Province that provincial grants should be construed in accordance with the law as declared by this statute. In these circumstances the undersigned has, with much hesitation, reached the conclusion that his duty may be not inadequately discharged by the submission of the foregoing observations for the approval of Your Royal Highness.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

Copy of an Order in Council approved by His Honour the Lieutenant Governor, the 16th day of March, A.D. 1912.

The Committee of Council have had under consideration the report of the Honourable the Attorney General, dated 16th March, 1912, on the subject of the report of the Honourable the Minister of Justice with reference to Chapter 6 of the Statutes of this Province of the year 1911, entitled "An Act for the Protection of the Public Interest in the bed of Navigable Waters."

The Committee concurring in the report of the Attorney General advise that the same be adopted and that a copy thereof be forwarded to the Honourable the Secretary of State, Ottawa, for the consideration of His Royal Highness the Governor General in Council.

Certified,

J. LONSDALE CAPREOL,

Clerk Executive Council.

To His Honour

The Lieutenant Governor in Council:—

The undersigned has had under consideration the report of the Honourable the Minister of Justice with reference to Chapter 6 of the Statutes of this Province of the year 1911, intituled "An Act for the Protection of the Public Interest in the bed of Navigable Waters," which after reciting the 2nd section of the Act, is as follows:—

"This provision applies to titles generally and it appears to have retroactive intention to revest in the Crown the bed of waters or streams which had been previously granted. No compensation is provided nor is there any recital in explanation. The undersigned reserves further comment pending communication with the Government of Ontario as hereinafter recommended."

"As to Chapter 6 the undersigned recommends in view of the very exceptional character of the legislation that enquiry be made of the Lieutenant Governor of Ontario as to the reasons which are thought to justify the statute in its retrospective effect."

The undersigned recommends that the Government of Canada should be respectfully informed that the Government of Ontario regrets it is again called upon to defend the right of a Provincial Legislature within the limits of the subjects and the area prescribed by section 92 of the British North America Act to enact such laws as it may deem expedient. This is a right which was recognized after full consideration by the Government of Canada in dealing with the Act 6 Edward VII, Chapter 12, relating to Cobalt Lake, and in dealing with the Act 8 Edward VII, chapter 22, relating to the Hydro-Electric Power Commission of Ontario.

The undersigned further recommends that the attention of the Government of Canada should be again called to the opinion expressed by the Judicial Committee of His Majesty's Privy Council in *Hodge vs. The Queen*, 1883, 9 A.C. 117, that "when the British North America Act enacted that there should be a Legislature for Ontario and that its Legislative Assembly should have exclusive authority to make laws for the Province and for Provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its powers possessed and could bestow. Within these limits of subjects and area the Local Legislature is supreme and has the same authority as the Imperial Parliament, page 132, and to the opinion of the Judicial Committee in *Attorney General of Canada vs. The Attorney General of Ontario*, 1898, A.C. 700, expressed in answer to a suggestion by Counsel that the power of the Dominion Parliament to legislate in relation to fisheries might be abused so as to amount to a practical confiscation of property, that the suggestion did not warrant the imposition by the courts of any limit upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used, and if it is the only remedy is an appeal to those by whom the Legislature is elected—page 713.

The undersigned also recommends that His Honour the Lieutenant Governor should be advised to communicate to the Government of Canada the respectful protest of the Government of Ontario against the apparent assumption by the Government of Canada of the right to call upon a Provincial Legislature to justify to it,

the policy, expediency, propriety or justice of any law which within the limits as to subjects and area, prescribed by section 92 of the British North America Act and in the exercise of the exclusive sovereignty with which it is invested that Legislature has chosen to enact, or the constitutional right to disallow such a law because in the opinion of the Government of Canada on its policy, expediency, propriety or justice is open to objection.

The possession by the Government of Canada of such a power in the opinion of the undersigned would mean the substitution for the judgment of the people of Ontario as the final arbiters the judgment of a body in no sense representative of and having no responsibility to the people of Ontario, and a return to the system of Government which obtained before the establishment of responsible Government in Canada, and it would also mean that instead of the legislative authority of the Provincial Legislature being within the limits and the area prescribed by section 92 of the British North America Act supreme authority would belong to the Government of Canada.

In order that the reason which induced the Government of Ontario to promote its Legislature to enact the law in question may appear of record, the undersigned begs to state them as follows:—

Until the decision to the contrary of the Court of Appeal in *Keewatin vs. Kenora*, 1908, 16 O.L.R. 184, there was an unbroken line of judicial opinion as well as the decision of Anglin J. in that case reported in 1906, 13, O.L.R. 237, in favour of the view that the settled law of this Province was as it is by the Act in question declared to be and as will be seen from the judgment of Anglin J., pp. 258-9, there was also an unbroken line of judicial opinion if not of judicial decision contrary also to the opinion of the Court of Appeal that the Imperial Act of 1792 introduced into this Province only such portions of the English Common Law as were reasonably applicable to its conditions.

Among the expressions of judicial opinion as to the first of these propositions to which reference may be made are:—

1. The opinion of Sullivan J., in *Parker v. Elliott* (1851), 1 U.C.C.P. 470),—

“The law is well settled in England as to the property in the land covered by sea water. It belongs to the Crown. The same rule prevails regarding all creeks and arms of the sea, and all navigable rivers up to the point where the tide rises. A different rule is however held to be in force upon all English rivers above the tide waters. There may be rights of public highway upon navigable rivers above the rise of the tide, but the land covered by the water of the river above the tide water is held to belong to the riparian proprietors. Those having then boundaries on each side having property in the bed of the river to the middle or thread of the stream. However inapplicable this rule may be to such rivers as the St. Lawrence and Ottawa, and more especially to the great lakes, to such waters as Lake Simcoe, Lake St. Clair, or even to the Rice Lakes, we have no common law to guide us but that of England; and it would seem to follow that the plaintiff, as riparian proprietor of Lot 24 is entitled to all the land covered with water to the Provincial boundary line in the middle of Lake Ontario, and the consequence would be that any accretion of land from the waters of the lake, whether in the shape of islands or otherwise, would belong to the riparian proprietor. Indeed all existing islands at the time of concession from the Crown, would follow the same rule, and the bank or spit of land now in question would belong to the plaintiff or proprietor of lot 24, whether it was cast up before or after the grant, without reference to the description in the patent. I am of opinion however that if the question comes to be settled without legislative interference in this country that our great rivers and lakes will not be held to be of the description of such waters as in England are above the rise and fall of the tide; all the practice of the land-granting departments in the country show a different impression to have prevailed in all our harbours, and even upon the interior lakes water lots have been granted outside of the land of the riparian proprietors, and

islands such as Barnhart's Island in the St. Lawrence, Wolfe Island, the whole of the Thousand Islands, the Allumette and Calumet islands in the Ottawa, islands in the Detroit and St. Clair straits and all others similarly situated have been treated as belonging to the Crown, notwithstanding grants on the shore to riparian proprietors, so that either the rule of the common law of England has been by common and universal interpretation most reasonably held not to apply to the lakes and great rivers of Canada, or else the whole of the lands of riparian proprietors being held under grant from the Crown containing boundaries defined in writing—these boundaries when running to the water's edge, the bank of the water, the lake or the river, must be taken to extend no further and to leave the land covered with water ungranted and the property of the Crown. It appears to me therefore that we must hold the grant now in question to extend to the edge of the land and no farther." 1 C.P., pp. 488, 489 and 490.

2. The opinion of Richards J. in *Gage v. Bates* (1858), 7 U.C.C.P. 116, as follows:—

"If we hold that the rule of the common law as to the flux and reflux of the tide being necessary to constitute a body of water a navigable stream or river in this country, then our great lakes and rivers flowing for hundreds of miles, which in many places along their course are the boundary and common highway between this Province and a foreign country, must be considered as subject to the incidents of small inland streams, flowing for comparatively a short distance in a country like England and subject to exclusive rights of fishing, etc., which may be granted by the Crown to the proprietors of adjacent land, or other rights which there vest in the owners of the soil adjacent to the shores of these streams. The opinions expressed by the learned Judges of the Common Pleas in *Parker et ux v. Elliott* (1 U.C.C.P. 470) although not expressly deciding this point seem to me to lead to the conclusion at which we have arrived, that the rule of the common law as to the flux and reflux of the tide being necessary to constitute a body of water a navigable river does not apply to a case like the present." pp. 119, 120.

3. The opinion of Wilson J. in *Reg. vs. Sharp* (1869), 5 P.R. 135, who says:—

"The case of *Parker vs. Elliott* (1 C.P. 470) and *Gage v. Bates* (7 C.P. 116) determine 'that the rule of the common law as to the flux and influx of the tide being necessary to constitute a body of water a navigable river' does not apply to a case like the present, and that these great lakes are not to be considered in the same light as the small inland streams in England" and treats it as settled law that "the lakes here are not governed by the law applicable to the small waters in England" p. 140.

4. The judgment of the Court of Common Pleas, delivered by Gwynne J., in *Dixon v. Snetsinger* (1873), 23 U.C.C.P. 235, who apparently refers with approval to what was said by Sullivan J. in *Parker v. Elliott* by Macauley C. J. in *Regina v. Meyers*, and by Richards J., in *Gage v. Bates*, and the holding of the Court in *Attorney General v. Perry*.

The opinion of Strong J. in *Reg. vs. Robertson* (1882), 6 S.C.R. 52, at p. 129.

5. The opinion of Wilson C. J. in *Warin v. The London and Canadian* (1885), 7 C.R. 706, that the Crown "is the owner of the soil in these large lakes just as much so as it is in the soil of the sea and in the rivers, where there is the ebb and flow of the tide, and also of the soil in the bays of the lakes as part of the same, at any rate of such of them as are navigable"—p. 722.

"It is clear the proprietors of land on the shores of these lakes do not own the soil *ad filum aquae*, and I adopt without hesitation the law laid down by the American cases referred to in *Gould on Waters*" p. 723 "I merely say that by the common law in such lakes as these are here the Crown has in my opinion the proprietary right to soil of the lakes"—p. 724.

6. The opinion of Burton J. A. in *Ratte v. Booth* (1887), 14 A.R. 419, affirmed 15 A.C. 188. "I think the answer to that contention is to be found in the judgment

of Mr. Justice Gwynne, in *Dixon vs. Snetsinger* (23 C.P. 235), where the question of the rights of riparian proprietors on the banks of our great lakes and navigable rivers was much discussed, and the conclusion arrived at that the bed of such river does not pass under the rule of the common law of England *ad medium filum aquae* to the riparian proprietors, but is vested in the Crown for the use, benefit and enjoyment of the public in the waters flowing over it.

"A grant of lands on the side of non-navigable streams, in the absence of evidence to the contrary, conveys the soil of the bed to the middle of the stream, on the other hand, any grant of land by the Crown on the banks of a navigable river like the Ottawa, would *prima facie* be bounded by the edge of the stream. It requires an absolute grant of the bed of the stream, there being no presumption of law in such a case that the ownership of the bed of the river goes along with the ownership of the shore."—pp. 438-439.

7. The opinion of Strong C. J., concurred in by Sedgwick and Taschereau, in *Barthel v. Scottan* (1895), 24 S.C.R., 367.

"There can be no doubt that situate as this ———— is on large navigable river, and international waterway, the water's edge forms the western boundary. A grant of land bounded by the banks or edges of such streams does not extend to the middle or thread as is the case where lands described as so limited lying on the banks of non-navigable rivers are granted" p. 370 . . . and that "it is probable that the parties were under a mistaken impression as to the law and supposed that the same rule which applied to grants of land in non-navigable waters were applicable to this land."—p. 373.

8. The opinion of Strong C. J. in the *Provincial Fisheries Case* (1895), 26 S.C.R. 445, at p. 520.

"Nor do I think the rule in question applies even to such rivers as are specifically mentioned in the first question propounded to us, or other non-tidal rivers which are *de facto* navigable. It appears from several cases decided in the Courts of the Province of Ontario that such lakes and rivers are to be considered navigable waters and that the rule of the English law as to navigable tidal waters applies to them. I refer particularly to the cases of *Parker v. Elliott*, *The Queen v. Meyers*, *The Queen v. Albert Sharp*, *Gage v. Bates*, and *Dixon v. Snetsinger*"—p. 520 In the case of non-navigable waters riparian proprietors on one side whose grants are bounded by the stream are entitled to the property in the bed of the river to its middle thread. This rule, however, is not applicable to the great lakes of Canada, and to rivers which are *de facto* navigable, for the reasons given in the Ontario cases before cited."—p. 521.

And to these may be added the cases of *Reg. v. Meyers* (1853), 3 U.C.C.P. 305; re *Miller and G. W. R.* (1856), 13 U.C.R. 582; *Attorney General v. Perry* (1864), 15 U.C.C.P. 329; and *Kecwatin v. Kenora* (1906), 13 O.L.R. 237 and 16 O.L.R. 184.

The Department of Crown Lands had always acted upon the view that the law was as it is by the Act in question declared to be, and many patents had been issued for lands bordering on navigable waters on the faith of that being the law, and if these patents are to be construed according to the law as laid down by the Court of Appeal, those claiming under them will be entitled to rights which were not intended to be granted.

Many private transactions had taken place on the like faith and they would be similarly affected.

Very many water lots had also been granted by the Crown on the faith of the law being as it is by the Act in question declared to be, and millions of dollars had been expended upon them in the same faith, and the titles to these lots with the improvements upon them would have been placed in jeopardy if the grants were to be interpreted according to the view of the Court of Appeal in the *Kenora* case.

In view of these considerations and of the well recognized principle of English law that a decision of long standing, affecting the law of real property which has

remained unimpugned and on the faith of which property may have been acquired, will not be overruled even if the Court which is asked to overrule it may be of opinion that the decision was wrong, the legislation is not only expedient but just, and in the opinion of the undersigned is not open to objection as being either *ex post facto* or retroactive legislation, from which it radically differs in that it is but declaratory of that which, until the decision of the Court of Appeal, was universally accepted as being the law.

Evidently impressed with the extraordinary consequences which would flow from the decision of the court that the rule of the English Common Law was applicable *prima facie* at all events to land bordering on the great lakes and international rivers the Chief Justice of Ontario expressed the view that the presumption would as to such waters be not difficult of rebuttal, 16 O.L.R. 190, but this view appears to be opposed to that of Lord MacNaughten expressed in the recent case of *Johnston vs. O'Neill*, 1911, A.C. 553, where after referring to two propositions of law laid down by one of the Judges in the Court of First Instance, one of which was that the Crown is not of common right entitled to the soil or water of an inland navigable lake, that learned Law Lord says "these propositions were accepted by the Court of Appeal. They were only faintly questioned at the Bar. Speaking for myself I heard no argument tending in the slightest degree to shake their authority. I think they are incontrovertible. I may add that in my opinion there can be no difference in this respect between a small lake and a lake so large that it may be termed an inland sea. In this country one and the same law applies to inland, non-tidal waters, whatever the size of the water space may be."

If this be the common law of England it is not necessary to point out the extraordinary consequences that would in the case of a grant of land bordering on one of the great lakes or rivers of this Province flow from a decision that the law is applicable to Ontario.

It is perhaps unnecessary to add that while the question of whether or not compensation is to be given for property taken for public use is to be determined by the Legislature by which the law is enacted and by it alone. *Florence Mining Co. vs. Cobalt Lake Mining Co.*, 1908, 18 O.L.R. 275, at page 279, persons whose technical rights (on the assumption that the decision of the Court of Appeal was right) may be affected by the Act in question has in the opinion of the undersigned neither in equity nor in morals any right to be compensated for any loss by them.

The whole subject of disallowance is dealt with very fully in a report of the Attorney General for Ontario adopted by Order of the Lieutenant Governor in Council, the 7th day of December, 1909, a copy of which report was transmitted in a covering despatch bearing date the 7th day of December, 1909, to the Honourable the Secretary of State for consideration by the Governor General in Council.

In this report, particular attention is called to a speech made by the Honourable A. B. (now Sir Allen) Aylesworth, at that time Minister of Justice, delivered on the 1st day of March, 1909, in the House of Commons, and the said report contains copious quotations therefrom.

Attention is also directed to the report of the Minister of Justice to His Excellency the Governor General, dated 29th day of March, 1910, and approved by His Excellency the Governor General in Council on 15th April, 1910.

J. J. FOY,

Attorney General.

2 GEORGE V, 1912

(Approved 24 April, 1913.)

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the second year of His Majesty's reign 1912, and received by the Secretary of State for Canada on 14th May last. Many of these statutes are revisions or consolidations of the existing statutes of Ontario. Some of these contain provisions which are in the opinion of the undersigned *ultra vires* or questionable, but as these enactments already find place in the statutes it does not appear that any useful purpose would be served by considering the exercise of the power of disallowance with respect to them. The undersigned considers therefore that the legislation of the year may be left to such operation as it may have, subject to the comments herein stated.

Chapter 8—intituled "An Act to amend The Mines Act of Ontario."

Objections have been made to some of the provisions of this Act. A petition has been received from the Solicitors of the Drummond Mines, Limited, and George Edward Drummond praying for disallowance on the ground that section 28 interferes with navigation, and the petitioners apprehend that the power which this provision professes to confer may be exercised with respect to Kerr Lake in the District of Nipissing, which is said to be a navigable body of water in which the petitioners are interested.

Upon reference of the petition to the Lieutenant Governor of Ontario he reports in effect that it is not the intention of the Act to interfere with navigation; that the provision in question has its application to matters within the legislative authority of the Province, and that it is not to be presumed to carry any extra-provincial intent.

The undersigned observes moreover that any attempt which might be made to include under the authority of this statute works which would interfere with navigation may be restrained by the courts in proper proceedings.

For these reasons the undersigned does not consider that he should recommend the disallowance of this Act.

Chapter 145—intituled "An Act respecting The St. Catharines General and Marine Hospital."

It is recited that this hospital was incorporated by Chapter 107 of the Acts of the Parliament of the late Province of Canada, passed in the twenty-ninth year of Her late Majesty's reign, and the purpose of the Act is to enlarge the powers of the corporation with respect to the acquisition of lands, the borrowing of money and the maintenance of a school for nurses. If this hospital be as its corporate name indicates a marine hospital, the Act would seem to be *ultra vires* of the local legislature to pass because the establishment and maintenance of marine hospitals is by the British North America Act entrusted to the Parliament of Canada. The undersigned recommends therefore that this question be further considered by the local authorities.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

3-4 GEORGE V, 1913*(Approved 27 November, 1913.)*

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the third and fourth years of His Majesty's reign, 1913, and received by the Secretary of State for Canada on 23rd May last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned observes that many of the Public Acts in this volume contained are consolidations or re-enactments of existing laws of the province, and these may remain subject to the comments which were made thereon by the Ministers of Justice in their reports upon the original enactments.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

*Minister of Justice.***4 GEORGE V, 1914***(Approved 21 November, 1914.)*

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 16th November, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the fourth year of His Majesty's reign (1914); received by the Secretary of State of Canada on 27th May, 1914, and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of His Government.

Humbly submitted,

CHAS. J. DOHERTY,

*Minister of Justice.***5 GEORGE V, 1915***(Approved 28 April, 1916.)*

DEPARTMENT OF JUSTICE, OTTAWA, 26th April, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the Fifth year of His Majesty's reign, 1915, and received by the Secretary of State for Canada on 28th April last, and he is of opinion that these statutes may be left to such operation as they may have.

Chapter 45, intituled "An Act respecting the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa," must, however, be the subject of special consideration.

A great number of petitions and representations have been made with respect to this legislation, many of them very numerous signed, on behalf of ecclesiastical and municipal authorities and of individuals, and these have been the subject of careful consideration, not only by reason of the importance and public interest attached to the matter concerned, but also on account of the respectable and dignified status or position in the community of those who join in the submissions. Among the petitions there is one from the "Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa, on its own behalf and on behalf of numerous Boards of Trustees of Roman Catholic Separate Schools in the Province of Ontario, and on behalf of supporters of Roman Catholic Separate Schools in the said City of Ottawa and throughout the said Province," in which the petitioners pray that the said Chapter 45 may be disallowed for reasons which are very elaborately set forth and discussed, and which include the reasons of the other petitioners. These will be considered in this report.

The Act proceeds upon a preamble or narrative setting forth the motive of the legislation which may be advisedly quoted in full, since the facts therein narrated are not disputed by the petitions. It is as follows:—

"Whereas an action is now pending in the Supreme Courts of Ontario in which one R. Mackell and other supporters of the Separate Schools in the City of Ottawa are plaintiffs and the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa is defendant, in which action the said Board is contending that Regulation Number 17 of the year 1912 and Number 17 of the year 1913 made by the Minister of Education were *ultra vires* of the Province under the British North America Act, and that the Province had no legislative authority under the said Act to regulate the use of French as a language of instruction and communication in the Public and Separate Schools of the Province, or the teaching therein of the French language; and whereas the said Board has failed to open the schools under its charge at the time appointed by law, and to provide or pay qualified teachers for the said schools, and has threatened at different times to close the said schools and to dismiss the qualified teachers duly engaged for the same."

Upon these recitals the statute proceeds to declare or enact, that subject to the question of legislative authority the said regulations, No. 17, were duly made and approved under the authority of *The Department of Education Act*, and became binding according to their terms and provisions upon the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa and the schools under the control of the Board; that it shall be the duty of the members of the Board to keep open, maintain and conduct the schools under their control according to law, with qualified teachers and suitable accommodation for the children attending; to continue to employ the qualified teachers at present in the service of the Board at their present salaries, unless otherwise directed with the approval of the Minister of Education; to engage such additional teachers as may be required; to pay the salaries of all qualified teachers as they become due, and to do such acts as may be necessary to carry out and perform these duties.

Then by Section 3 it is enacted that if, in the opinion of the Minister of Education, the Board fail to comply with any of the provisions of the Act, the Minister shall have power with the approval of the Lieutenant Governor in Council to appoint a commission; to vest in the commission so appointed all or any of the powers possessed by the Board under statute or otherwise, including the right of administration of the assets of the Board, and such other powers as may be expedient to carry out the intent and objects of the Act; to suspend or withdraw all or any part of the rights,

powers and privileges of the Board, and to restore the whole or any part thereof and revest them in the Board as may be desirable; also to make such use or disposition of any legislative grant payable to the Board for the use of the schools as the Minister may in writing direct.

Finally it is provided that nothing in the Act shall be construed to relieve the Board, or any of its members, from the discharge of any of the duties imposed upon it or them by law, or by any judgment in the recited action, or from any liability incurred by reason of failure or neglect of any of the members of the Board to discharge or perform any of the said duties.

The 17th regulation which is referred to in the preamble and in the first section of the Act makes provision regarding the courses of study to be pursued in the English-French schools, public and separate; that where necessary in the case of French-speaking pupils, French may be used as the language of instruction and communication; not to be continued, however, beyond Form 1, except that, with the approval of the Chief Inspector, French may also be used as the language of instruction and communication in the case of pupils beyond Form I who are unable to speak and understand the English language; that in the case of French-speaking pupils who are unable to speak and understand English well enough for the purpose of instruction and communication, the pupil shall begin the study and use of English as soon as he enters school, and take up the course of study in that language when he has acquired sufficient facility in the use of English; that in schools where French has hitherto been a subject of study, the public or the separate school Board, as the case may be, may provide for instruction in French reading, Grammar and Composition in Forms I to IV, in addition to the subjects prescribed for the public and separate schools, such instruction in French to be taken only by pupils whose parents or guardians direct that they shall do so, and that such instruction may, notwithstanding the general provision, be given in the French language; that instruction in French shall not interfere with the adequacy of the English courses, and that a provision for such instruction in French in the time-table of a school shall be subject to the approval and direction of the Chief Inspector, and shall not in any day exceed one hour in each class-room, except where the time is increased upon the order of the Chief Inspector. There are further provisions to the effect that English-French schools shall, for the purposes of inspection, be organized into two divisions, each division being under the charge of two inspectors, and there are directions for the inspectors in the performance of their duties of inspection; moreover, the Chief Inspector of Public and Separate Schools is to be the Supervising Inspector of the English-French schools; no teacher is to be granted a certificate to teach in English-French schools, or to remain in office, or to be appointed to teach, who does not possess a knowledge of the English language sufficient to teach the Public and Separate School course of study; and it is also provided that the legislative grants to the English-French schools shall be made on the same conditions as are the grants to the other public and separate schools, and that English-French schools which are unable to provide the salaries necessary to secure teachers with the aforesaid qualifications shall receive special grants to assist.

These regulations were made presumably by the Minister of Education with the approval of the Lieutenant Governor in Council as authorized by *The Department of Education Act* of Ontario; and they derive their sanction from the latter Act, and independently of Chapter 45; although, as already shown, they are declared by Chapter 45, subject to a question as to the legislative authority of Ontario, to have been duly made and approved.

It may thus be perceived that the purpose of the legislation is to regulate the duties of the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa, and, in anticipation of failure or neglect of the Board to comply with its statutory requirements, to confer upon the Minister of Education in that event authority to appoint a commission, in the place of the trustees, for carrying

on the schools in the meantime, but it is nevertheless the apparent intention that the Board, or its members, shall not be relieved of their duties and obligations as imposed by the law, and it would seem to follow that a disposition on the part of the members of the Board to execute their powers legally would find the Board in the full possession of those powers.

The petitions set forth that Roman Catholic Separate Schools have been established, maintained and conducted in Ontario since 1841, and especially, in the years immediately preceding Confederation, under the provisions of the Upper Canada Statute of 1863, Chapter 26, entitled "An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools"; that in some of these separate schools French was the only language used as means of instruction and communication and as a subject of study, while in others, both the French and English languages were used as media of instruction and communication, as well as subjects of study, and that at the time of the passing of the British North America Act, 1867, a great many schools and classes answering to these descriptions had been established, and were being maintained, in various parts of Ontario. Reference is made to the education provisions of the British North America Act, 1867, and it is shown that since the Union the Roman Catholic Separate Schools have continued to be conducted in the manner described. Then it is said that by the 17th regulation the use of the French language in such schools has been unjustly limited, or actually prohibited, and that the schools have been subjected to inspection "contrary to and infringing upon the denominational character of said schools," and that the Department of Education is endeavouring to enforce the provisions of the regulation notwithstanding the representations, objections and protests of the petitioners; that the petitioners have resorted to the courts to enforce their rights and privileges and to impeach the validity of the regulation, and complaint is made that pending the litigation the regulation was declared to be valid by section 1 of the said Chapter 45. The petitioners, moreover, complain of the appointment of a commission under the authority of the last-mentioned Act, whereby the trustees are superseded in the execution of their office, and of the state of things which has been brought about by the administration of the separate schools under the direction of the commission, and the petitioners submit that the enactment and enforcement of Regulation 17, and of the said Chapter 45, constitute "an unjust and arbitrary violation, and the abrogation of the provisions of the laws respecting separate schools, of the British North America Act, 1867, and of the rights, privileges, powers and duties by such laws granted and guaranteed to the said Board and the said ratepayers."

The petitioners also argue that the legislation as evidenced by the statute and regulations is aggressive and unfriendly, and in conflict with the principles of good government and benevolence which should be observed in the execution of legislative powers affecting the education of bilingual races under a common system. The claim, however, is, as already shown, that the statute be disallowed, and the petitioners evidently realize, what will hereinafter be made clear, that the regulations themselves cannot be disallowed.

It will thus be seen that both the subject matter of complaint and the grounds of the complaint are divisible into two heads. The regulation is attacked and the statute is attacked. It is claimed that both these are *ultra vires* of the provincial authorities, and it is moreover claimed that both the regulation and the statute are vicious in quality.

The 17th regulation in its present and latest form appears, upon the information before the undersigned, to have been sanctioned not later than August, 1913. It is an emanation from the Executive of Ontario in the performance of their statutory powers, and it is not within the prerogative of disallowance vested in Your Royal Highness to issue any order or direction which would invalidate, or interfere with the effect of the regulation. The power of disallowance is conferred by section 56 of the British North America Act 1867, whereby it is in substance enacted that where

the Lieutenant Governor of a province assents to a bill, he shall, by the first convenient opportunity, send an authentic copy of the Act to the Governor General, and if the Governor General in Council within one year after receipt thereof, think fit to disallow the Act, in the manner therein prescribed, the Act shall be thereby annulled. While, therefore, a local statute may be disallowed by Your Royal Highness in Council within the period of one year from the date of its receipt, and while if the power were exercised regulations depending upon the statute would doubtless fall with it, there is nevertheless no power conferred to disallow a regulation at any time passed under the authority of a statute in force, the time for disallowance of which has long since expired, still less to disallow such a regulation if, as in the present case, it has never been communicated by the local Government, and is not required to be communicated, to Your Royal Highness.

Consequently in so far as it is sought by the petitions to have the 17th regulation disallowed or invalidated, if that be an object of the petitioners, the prayer must fail by reason of the absence of any manner of authority in Your Royal Highness in Council to achieve or give effect to that purpose.

As to the disallowance of Chapter 45, however, the case stands upon a different footing. The statute was assented to by the Lieutenant Governor on 8th April, 1915, and received by the Secretary of State for Canada in due course on 28th April idem, and is consequently within the undoubted power of Your Royal Highness in Council to disallow.

By Order in Council of 11th March last it was directed, upon the recommendation of the undersigned, that copy of the petition presented on behalf of the Board of Trustees should be transmitted to the Lieutenant Governor of Ontario for the observations of his Government; and in reply a memorandum of the Prime Minister of Ontario, dated 4th instant, setting forth the views of his Government has been received. Copies of the petition and of the memorandum on behalf of Ontario in reply are submitted herewith.

It would appear, not only from the memorandum of the Prime Minister of Ontario, but also from the official reports of the proceedings to which he refers, that the questions which are or were in litigation as affecting the validity of Regulation 17 and the said Chapter 45 have been finally determined by the local courts, and that the validity, both of the regulation, as a competent execution of the power conferred upon the Minister of Education by *The Department of Education Act*, and of the statute as within the constitutional authority of the legislature, has been upheld. It is possible no doubt that these decisions may be reviewed, either by the Supreme Court of Canada, or by the Judicial Committee of the Privy Council, or perhaps by both tribunals; but whether the judgments be carried to appeal or not, it would, in the opinion of the undersigned, be an obviously unconstitutional proceeding that the undersigned, even if he entertained an opinion different from that which has been expressed by the courts, should advise Your Royal Highness to make that opinion the basis as against the judicial pronouncements, so long as they stand, of an order for disallowance, upon the ground that the legislation is incompetent to the enacting authorities.

It was said by Lord Watson in delivering the judgment of the Judicial Committee of the Privy Council in *Union Colliery of British Columbia vs. Bryden*, 1899, Appeal Cases, pp. 584-585, referring to the distribution of legislative authority by the British North America Act, 1867, that "In assigning legislative power to the one or the other of these parliaments, it is not made a statutory condition that the exercise of such power shall be, in the opinion of a court of law, discreet. In so far as they possess legislative jurisdiction, the discretion committed to the parliaments, whether of the Dominion or of the provinces, is unfettered. It is the proper function of a court of law to determine what are the limits of the jurisdiction committed to them; but when that point has been settled, courts of law have no right whatever to inquire whether their jurisdiction has been exercised wisely or not."

That eminent lawyer and former Minister of Justice, the late Honourable Edward Blake, speaking in the House of Commons in 1890 upon the subject of the exercise of the power of disallowance, alluded to the case in which a proposal comes before the executive to disallow an Act of a provincial legislature on the ground that the Act is *ultra vires*, and he said: "If it be so the Act is void, and I think I may say that it is now generally agreed that void Acts should not be disallowed, but should be left to the action of the courts."

Occasions may nevertheless present themselves, and have in fact occurred, in which the absence of a decision upon the case by the courts of law, or conformably with such a decision, a Minister of Justice might advise the disallowance of a statute upon grounds of *ultra vires*, but a Minister could not, in the opinion of the undersigned without assuming the functions of a court of appeal, which are not intended to be exercised by him, set up his individual view as a motive of proceeding in opposition to the deliberate finding of the established tribunals upon issues submitted, heard and determined in judicial proceedings in which the parties are properly convened upon the very question in hand.

One branch of the petitioners' complaint concerns the legislative ratification of the regulation, but the objections to the validity of the regulation, independent of a question as to the power of the Ontario Government to enact it, if any, are not stated, and they do not appear; nor is the undersigned informed that there is any question as to compliance with the statutory requirements for the sanction of the regulation. It is true that the petitioners contend that the regulation is in excess of provincial powers as limited by Section 93 of the British North America Act, 1867; but, assuming the regulation as competent to provincial authority in the execution of those powers, it is not suggested that it is invalidated by reason of any defect in the method of enactment. Moreover the regulation was judicially upheld in the case of *Mackell vs. The Ottawa Separate School Trustees*, 32 O.L.R. 245, a decision pronounced before the enactment of Chapter 45 now in question; and, as pointed out in the Prime Minister's memorandum, the legislative declaration of the binding effect of the regulation is expressed to be subject to the question of the legislative authority of the province under the British North America Act, 1867, a question which it may be observed, could not be prejudiced or affected by any provincial Act.

The petitioners' case for disallowance must therefore rest upon the argument that the exercise of the powers which the Ontario legislature possesses in the enactment of the said Chapter 45 has been indiscreet or unwise, and in conflict with the public interest. In the consideration of this aspect of the case it must not be overlooked that the subject of education has been committed in a very special manner by the Constitutional Act to the exclusive legislative power of the provinces. The general powers of legislation are distributed by Sections 91 and 92, in which there is no reference to education; but Section 93 is introduced specially to provide for this subject, and it is thereby enacted that in and for each province the legislature may exclusively make laws in relation to education, subject and according to certain limitations, which are expressly defined; and the suggestion or claim of the petitioners in effect is that Your Royal Highness's Government should review the exercise of this exclusive legislative power of the Province of Ontario, executed as it must be assumed to have been executed, for the purposes of the present question, within the limitations prescribed.

There has been much consideration of the question as to the exercise of the prerogative of disallowance with respect to statutes, the intent and operation of which are confined to the regulation of matters within exclusive provincial authority; and not only has the propriety of exerting the power in such cases, except where the general policy of the Dominion is affected, been seriously doubted by many of the Ministers of Justice, but the very existence of the power is questioned, if not denied, by the immediate predecessor in office of the undersigned. That the power legally exists cannot, however, in the humble opinion of the undersigned be disputed. But

such powers must of course be exercised upon sound principles of statesmanship, and not arbitrarily or in conflict with the powers of self-government committed to the Provinces.

The petitioners represent that there has been aroused in connection with the questions dealt with by this legislation, feelings of unfriendliness between the two principal elements of the Canadian population. The suggestion intended apparently is that such a state of feeling would so endanger the harmony of the Dominion as to make it a matter of general interest to Canada that it should be allayed. It cannot, in the view of the undersigned, be said that Your Royal Highnesses's Government is not interested for the peace, order and good government of Canada to avert such unhappy consequences as are thus suggested, if that be possible by any constitutional means. But the method proposed is disallowance, and it becomes necessary to consider whether it may, according to the true intent of the constitution, be justifiably adopted and whether its adoption would tend to allay or might not rather intensify the regrettable differences which are said to have arisen. The people of Ontario have through their representatives given effect to the legislation in question as expressing, in the words adopted by the Prime Minister of Ontario, "a very deliberate and important feature in the policy of the local Government" in relation to the pre-eminently important subject of education, and within the strict powers of the legislature as judicially defined. The measure is therefore sanctioned by the constitutional tribunal. Your Royal Highness's Government cannot, nor can the Parliament of Canada, put anything in the place of the provincial Act. Neither the one nor the other can have any policy to enunciate or sanction with regard to the conduct of the Roman Catholic Separate Schools for the City of Ottawa within the limits committed exclusively to the legislature. This is a matter wholly withdrawn from the legislative authority of the Dominion by the Constitutional Act.

It is observable that the statute is introduced by the preamble hereinbefore quoted, and that the facts therein narrated are not in any respect denied or put in question by the petitioners. In view of this narrative of the proceedings, as amplified and continued by the Prime Minister's memorandum, and upon consideration of the provisions of the statute, it appears that the purpose and effect of the legislation is to provide temporarily for the performance of statutory duties, which the trustees, upon whom the duties have been charged, refuse to execute. It would seem that provincial powers of self-government, if they are to be effective at all, must extend to the adoption of this statutory expedient; and a declaration by Your Royal Highness in Council that the provision of the legislature is so inappropriate or unreasonable as to justify its rejection, in competition with the alternative that the Roman Catholic Separate Schools of the City of Ottawa shall remain in the condition which the preamble describes, would involve a responsibility for the administration of provincial powers which the undersigned cannot advise Your Royal Highness to undertake. Disallowance in such circumstances would suggest that the legislature cannot be trusted to execute according to its own advice the limited powers committed to it, and not only would it create great popular dissatisfaction, but it would also give rise to a constitutional issue, which Your Royal Highness's Government could not justifiably uphold, and which would be fraught with danger to the maintenance of harmony between the people of the Dominion, as great, if not indeed greater, than that sought to be averted.

Therefore the undersigned does not feel justified to consider further the merits of the legislation, but he observes that the question whether the French language should be used for purpose of study and communication in the schools of Ontario is not strictly involved, because behind the statute stands the 17th Regulation, which would continue to operate notwithstanding disallowance of the statute, and the use of the French language in the schools would still be governed by its provisions.

For these reasons the undersigned is unable to advise that the petitioners present a case upon which Your Royal Highness can be advised to exercise the power of disallowance, and he humbly recommends that the said Chapter 45 be left to its opera-

tion, subject to further adjudication of the ultimate tribunals, if the pending proceedings be carried to appeal.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government, and that copies be also furnished for the information of the petitioners.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

To His Excellency the Governor General in Council:

THE PETITION of the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa

HUMBLY REPRESENTS:

1. Your Petitioners are the Trustees of the Roman Catholic Separate Schools for the City of Ottawa, duly elected by and representing the Roman Catholic Separate School ratepayers of the said City, and, as such, are by virtue of the laws governing Roman Catholic Separate Schools in the Province of Ontario, a body corporate entrusted with the management and control of the Roman Catholic Separate Schools for the said City of Ottawa and the administration of the property and assets thereof.

2. In the year 1915 the Legislature of the Province of Ontario by Chapter 45 of the Statute 5 George V, authorized the Minister of Education for the said Province to appoint a Commission for the purpose of vesting therein all or any of the rights, privileges and powers which your Petitioners so possess by law as aforesaid and to suspend or withdraw all of the said rights, privileges and powers. And thereupon the said Minister of Education did appoint such a Commission under the name "The Ottawa Separate School Commission," and on the 26th day of July, 1915, the said Commission forcibly took possession of the property and assets of your Petitioners and thereafter attempted to administer the same and to control and manage the schools entrusted by law to your Petitioners.

3. On the 6th day of November, 1916, on an appeal taken by your Petitioners to the King's Most Excellent Majesty, the Judicial Committee of the Privy Council declared the said Chapter of the Statute 5 George V to be *ultra vires* of the Legislature of the Province of Ontario and the said Commission to be without legal existence, upon, among other, the following grounds, namely:—

(a) "The status of the appellant Board depends on the provisions contained in "The Separate Schools Act, 1863." Section (2) of that Act confers the right of electing trustees for the management of a separate school for Roman Catholics, not on all the adherents of Roman Catholic schools in the province, but on any number of persons not less than five, being heads of families and free-holders, and householders, resident within any school section of any township, or corporate village, or town, or within any ward of any city or town, and being Roman Catholics. The right of electing managers is thus conferred on the supporters of a separate school or schools for Roman Catholics within one or other of the designated areas. In the present case the appellant Board are the elected trustees for the management of Roman Catholic Separate Schools within the City of Ottawa. They represent the supporters of the Roman Catholic Separate Schools within the area of the City, and as such elected trustees enjoy the right of management which was conferred under the Separate Schools Act, 1863. Apart therefore from any words of limitation or any implication to be drawn from the context, the appellant Board represent a section of the class of persons who are within the protection of provision (1) of Section 93. Their Lordships can find neither limiting words nor anything in the context which would imply that they are excluded from the benefit of the provision."

(b) "The case before their Lordships is not that of a mere interference with a right or privilege but of a provision which enables it to be withdrawn *in toto* for an indefinite time. Their Lordships have no doubt that the power so given would be

exercised with wisdom and moderation, but it is the creation of the power and not its exercise that is subject to objection, and the objection would not be removed even though the powers conferred were never exercised at all. To give authority to withdraw a right or privilege under these conditions necessarily operates to the prejudice of the class of persons affected by the withdrawal.

4. Notwithstanding the Judgment of the Judicial Committee of the Privy Council, during the Session recently closed of the Legislature of Ontario, the following Bills, namely, Bill 153 intituled "An Act respecting the Appointment of a Commission for the Ottawa Separate Schools" and Bill 154 intituled "An Act respecting the Roman Catholic Separate Schools of the City of Ottawa," were introduced, passed and duly sanctioned.

The first above mentioned Bill purports to authorize the appointment by the Lieutenant Governor in Council of a Special Commission with power to perform the duties and exercise the rights and privileges of your Petitioners and to take and assume the control and management of the Roman Catholic Separate Schools by law so entrusted to your Petitioners, as well as the administration of the property and assets belonging to said schools.

The Bill mentioned secondly above purports to validate and render lawful and binding the acts of administration of the said The Ottawa Separate School Commission and the payments made and the liabilities incurred by the members of the said Commission under the provisions of the aforesaid Chapter 45 of the Statute 5 George V in the conduct and management of the Roman Catholic Separate Schools for the City of Ottawa from the time of the appointment of the said Commission down to the date of the Judgment aforesaid of the Judicial Committee of the Privy Council, to compel your Petitioners to pay and discharge all of the said expenditures and liabilities and to indemnify the members of the said Commission against any liability arising out of their administration of said schools.

5. Your Petitioners, by petitions respectively addressed and duly forwarded to and received by the Legislature of the Province of Ontario and the Lieutenant Governor of the said Province, humbly prayed that the said Bills should not be passed but should be reserved for the sanction of your Excellency, pursuant to the provisions in that behalf contained in the British North America Act, 1867, sections 56 and 90; but the Bills notwithstanding were put through their different stages and duly adopted.

6. During the discussion of these Bills in Committee and upon motion for their reading it was moved in amendment that the Bills be referred to the Supreme Court of Canada in order to obtain the opinion of the said court as to the constitutional validity of said Bills. This amendment was rejected and the two Bills were sanctioned by the Lieutenant Governor of Ontario on the 12th day of April, 1917. The Acts in question are now chapters 59 and 60 of 7 George V.

7. Your Petitioners respectfully urge that these Acts of the Legislature of the Province of Ontario should be by your Excellency disallowed, and in support of their prayer beg to submit:—

A. That these enactments constitute an unjust, unwarranted, arbitrary and vexatious interference with the rights, privileges and duties of your Petitioners and of the Roman Catholic Separate School ratepayers of the city of Ottawa in the control and management of the said schools and the administration of the property and assets belonging to them; and also gravely interfere with the vested rights of the creditors and Bondholders of your Petitioners.

B. That these enactments prejudicially affect the rights and privileges with respect to said denominational schools which your Petitioners and the class of persons represented by them had by law in the Province of Ontario at the time of the passing of the British North America Act, 1867, and which they since have had and now have, as specifically found and determined by the said judgment of the Judicial Committee of the Privy Council, rendered as aforesaid, on the 6th day of November, 1916. (Sub-section 1 of Section 93, British North America Act, 1867.)

C. That the Act intituled "An Act respecting the Appointment of a Commission for the Ottawa Separate Schools" contains the same provisions as are contained in said chapter 45 of 5 George V, which the Judicial Committee of the Privy Council has declared to be *ultra vires* of the Legislature of the Province of Ontario and the said Act purports to authorize precisely what the said Judicial Committee has formally declared to be beyond the powers of the said Legislature to enact.

D. That the Act intituled "An Act respecting the Roman Catholic Separate Schools of the City of Ottawa" purports to authorize and to do precisely what the said Judicial Committee has pronounced to be wholly beyond the powers of the said Legislature.

E. That the Acts in question were passed in opposition to and in defiance of the said Judgment of His Majesty the King in His Privy Council.

F. That these enactments, besides being unjust and vexatious, and passed without constitutional authority have gravely affected the peace and harmony between the citizens inhabiting the said Province and the Dominion of Canada. They are causing profound divisions among and arousing bitter animosity between the races which compose the great majority of the population of the Dominion.

G. That unless the said Acts are disallowed by your Excellency your Petitioners and those whom they represent will be deprived of the only substantial remedy against the provisions thereby enacted, and the only relief left to them will lie in a long, tedious and very expensive recourse to His Majesty the King's Courts of law.

H. That the Legislature of Ontario, in enacting the said Acts, in defiance of the Judgment of the Judicial Committee of the Privy Council, has given conclusive evidence of its determination to re-enact these provisions, notwithstanding past or future decisions of His Majesty's final Court of Appeal.

I. That the refusal of your Excellency to disallow the said Acts would be looked upon by the majority in the Legislature of Ontario as an approval of this legislation.

Your Petitioners also respectfully request that your Excellency should use the powers vested in your Excellency by Sections 56 and 90 of the B.N.A. Act, 1867, to compel complete obedience to and observation of the King's Most Excellent Majesty in Council finally determining this matter.

Your Petitioners beg to be allowed to respectfully remind your Excellency that the laws concerning education in the Province of Ontario provide ample means, by way of mandatory injunction and other legal proceedings and by the imposition of fines and penalties, to compel School Trustees to perform the duties entrusted to them by law.

Your Petitioners refer also to the following part of the Reasons for Judgment of the Judicial Committee:—

"They (their Lordships) cannot, however, assent to the proposition that the Appellant Board are not liable to process if they refuse to perform their statutory obligations, or that in this respect they are in a different position from other boards or bodies of trustees entrusted with the performance of public duties which they fail or decline to perform."

Your Petitioners beg to refer to "Canada's Federal System," Lefroy, at p. 30:—

"It is right to notice the veto power which the Federal Government possesses over Provincial legislation, which is a special feature of the constitution of Canada distinguishing it from that of the United States. In words of the Privy Council: *Bank of Toronto vs. Lambe* (1887, 12 App. Cas. at p. 507) "Under the constitution of the United States, each state may make laws for itself, uncontrolled by the Federal Power, and subject only to the limits placed by law on the range of the subjects within its jurisdiction." "But in the case of Canada, the B.N.A. Act" makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the confederated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, *except under the control of the whole, acting through the Governor General*. "This Federal veto power is that principle of self control of which the late Mr. Cardwell as Secretary of State

for the Colonies says, in a despatch to the Governor General of December 3rd, 1864, acknowledging the receipt of Quebec Resolutions: 'The importance of this principle cannot be overrated, its maintenance is essential to the practical efficiency of the system, and to its harmonious operation, both in the general government and in the government of the several provinces.'"

"The Law of the Canadian Constitution." Clement, 3rd Edition, p. 153.

"A very sharp line of distinction was drawn between the exercise by the Dominion Government, as a matter of political expediency of the power of disallowance of provincial Acts, and the exercise by the Courts of the judicial function of declaring an Act *ultra vires*. As expressed by the Chancellor of Ontario, the supervision touching provincial legislation entrusted to the Dominion Government works in the plane of political expediency as well as that of jural capacity, while the question for the Courts is as to the latter merely. The framing of the Quebec Resolutions, upon which the B.N.A. Act is founded, was the work of the most eminent legal minds of that day in Canada; and a glance at the debates upon these resolutions will show that they thoroughly appreciated the distinction pointed out in later days by the Chancellor. Throughout the debates it was clearly recognized that the exercise by the Dominion Government of the power of disallowance was to be exercised in support of federal unity—e.g., to preserve the minorities in different parts of the confederated provinces from oppression at the hands of the majorities."

"Canada's Federal System," Lefroy, p. 3.

Mr. Doherty, in his report as Minister of Justice, dated Jan. 20th, 1912, and duly approved by Order in Council, advised against disallowance, but at the same time he distinctly asserts that the veto power may constitutionally be exercised on ground of hardship and injustice to the rights affected. He says: "There was considerable discussion at the hearing as to the practice and precedents, in respect of disallowance of legislation by reason of unjust provisions, or because of contract, and a recent report of the predecessor in office of the undersigned was quoted as showing that the Governor General should in no case be advised to disallow for such reasons. It is true, as has frequently been pointed out, that it is very difficult for the Government of the Dominion, acting through the Governor General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights affected and this is manifest not only by expressions in reports of the Ministers, but also by the fact that but one single instance is cited in which the Governor General has exercised the power upon these grounds alone. The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing not inconsistently with the public interest, irreparable injustice or undue interference with private rights of property through operation of local statutes *intra vires* of the legislatures."

Your Petitioners therefore respectfully pray that your Excellency may be pleased to disallow the said Acts.

And as in duty bound they will ever pray.

Ottawa, April, 1917.

Signed:

Samuel M. Genest, Chairman.
Osiás Sauvé.
Charles Leclerc.
Adolph Leclerc.
D. Raymond.
F. O. Schybert.
M. Beaudry.
Gil Julius.
Ernest Blanche.
Herbert Clarke, Secretary Treasurer.

Harris Preston.
Joseph Saint Germain.
C. J. Bettez.
N. J. Lacasse.
Joseph Rowe.
M. Cain.
C. E. McManus.
J. M. Lemieux.
A. Belanger.

Memorandum of the Prime Minister of Ontario:

The undersigned submits the following observations in answer to the Petition presented to His Royal Highness the Governor General in Council by Samuel M. Genest and others praying for the disallowance of an Act of the Legislature of Ontario, Chapter 45 of 5 George V (1915).

Objection is taken by the Petitioners to sections one and three of the Act. The former deals with Regulation No. 17 of the Department of Education which regulates the use of the French language in the Public and Separate schools of the Province and the latter empowers the Minister of Education under certain conditions to transfer to a Commission the rights and powers of the Trustees of the Roman Catholic Separate Schools of the City of Ottawa. The two sections deal with entirely separate and distinct matters and should be considered separately. The main ground of objection to each section is that it is *ultra vires* under subsection one of section 93 of the British North America Act.

Under section 93 the legislature of Ontario may exclusively make laws in relation to education subject to the limitation imposed by the first subsection, which reads as follows:—

“(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union.”

Legislation falling within the prohibition of this subsection is *ultra vires*. The rights and privileges protected are those which any class of persons had (1) “by law” (2) “at the union” (3) “with respect to denominational schools.” All legislation affecting those rights is not prohibited but only such legislation as “prejudicially” affects them. Whether any given legislation is prejudicial is a question of fact to be determined in the particular case.

At the Union the only law of Upper Canada that conferred rights or privileges with regard to denominational schools in Ontario was contained in Statute 26, Vict., Chap. 5. It authorized the voluntary establishment of Separate Schools by Protestants, by coloured people and by Roman Catholics. The distinguishing feature of the Protestant and the Roman Catholic Separate Schools was religious belief. No provision was contained in the Act for the use of any special language. The only schools which were in any sense differentiated by language or race were the schools of the coloured people. There were in Ontario at the Union certain French settlements and also certain German settlements, but neither the French nor the German inhabitants of Ontario were authorized to establish separate schools. Their children attended either the common (now called public) schools or the separate schools, as best suited them, but the Statute 26, Vict., Chap. 5 (1863), did not, nor did any other law of the Province confer upon either the French or the German people any special right or privilege with respect either to the Protestant Separate Schools or to the Roman Catholic Separate Schools.

It has been the effort of different Governments of the Province of Ontario to secure adequate teaching of English in all the schools, both public and separate, of the Province. A determined effort was made to increase the study of English in 1885 and subsequent years. On 9th September, 1889, the Hon. George W. Ross, then Minister of Education, issued “Instructions to the Teachers of French-English Schools” which in part read as follows:—

“In August, 1885, the Education Department adopted the following regulation for the study of English in School-sections where the French or German language prevails:—

“The programme of studies herein provided shall be followed by the teacher as far as the circumstances of his school permit. Any modifications deemed necessary should be made only with the concurrence of the

Inspector and Trustees. In French and German schools the authorized Readers should be used in addition to any text-books in either of the languages aforesaid."

This Regulation was supplemented by instructions issued in September of the same year, pointing out the best methods of teaching English in such schools, and although it appears from the report of the Commissioners who recently visited the French Districts that the authorized readers are used in every school and that a laudable effort is being made by Trustees and Teachers to carry out the intentions of the Department with respect to the study of English, it must not be assumed that all has been accomplished that was intended by the above regulations or subsequent instructions. There is still room for improvement, particularly in colloquial use of English. The Commissioners report that in some schools the pupils in reading the English text-books appeared to be repeating words, the meaning and use of which they did not understand. This defect in teaching should receive immediate attention. It is hoped that by following the directions herewith submitted all just cause of complaint in regard to this matter will be speedily removed."

Then followed certain directions which were to be followed by the teachers to increase the study of English.

The settled policy of the present Government was indicated in the following resolution which was passed unanimously by the Assembly on 22nd March, 1911:—

"Resolved that the English language shall be the language of instruction and of all communications with the pupils in the public and separate schools of the Province except where in the opinion of the Department of Education it is impracticable by reason of pupils not understanding English."

In pursuance of this policy the Minister of Education with the approval of the Lieutenant Governor in Council in June, 1912, made and published Regulation No. 17. It was amended in a manner not now material in August, 1913. The important features of the Regulation were:—

(1) Where necessary in the case of French speaking pupils French was authorized to be used as the language of instruction and communication but not without the approval of the Chief Inspector beyond Form 1.

(2) In schools where French had hitherto been a subject of study the School Board might provide under certain conditions for instruction of French reading, grammar and composition.

(3) Provision was made for inspection of these schools which in the Regulation were styled English-French schools.

(4) The regulation was applicable alike to both public and separate schools.

The regulation was in each of the years 1912 and 1913 laid on the table of the House as required by the Department of Education Act, and without objection from any Member of the Assembly, became part of the school law of Ontario. The object of the Regulation was to secure for all the pupils in the public and separate schools of Ontario a proper English education.

There are 192 school-rooms in Ottawa under the jurisdiction of the Trustees of the Roman Catholic Separate Schools (herein referred to as the Board). Of these 116 are English-French within the meaning of the said Regulation and the remaining 76 are English.

After the publication of Regulation 17 in June, 1912, a majority of the Board determined notwithstanding the protest of the minority members of the Board to refuse to enforce said Regulation in the English-French schools under the Board's jurisdiction, or to permit the teachers in the said schools to observe it. On September 11, 1912, the majority passed a resolution expressly declining to enforce the Regulation and they ordered that a copy of the resolution be sent to the Principals of all the said schools "in order that the purport be carried out". After amended Regulation 17 was issued in August, 1913, the majority again on 14th October, 1913,

passed a further resolution affirming and repeating their refusal and they ordered that a copy of the resolution "be sent to the Department of Education and to all the bilingual school boards or sections of Ontario and that a copy of the said resolutions be also posted on the walls of each class of the French schools of the city". From that time on the wishes and views of the minority of the Board and of a very large section of the Roman Catholic school supporters in Ottawa were entirely disregarded; the Department of Education was openly defied; and the inspectors appointed by the Minister were ignored by the Board, the teachers and the pupils. The inspectors found it impossible to inspect the schools for the pupils left the school room when the inspector arrived. Teachers who held no certificates or whose certificates expired and were not renewed and who refused to observe the regulation were continued in the service of the Board contrary to law. Legislative grants amounting to \$5,000 a year became forfeited. Many of the English speaking Roman Catholic separate school supporters became greatly dissatisfied, the more so because the majority of the Board endeavoured to force the issue of debentures aggregating about \$275,000 for additional school accommodation notwithstanding that many English speaking pupils were likely to be withdrawn from the schools owing to the manner in which they were being conducted.

Under these circumstances, R. MacKell, a member of the Board, and certain other English speaking members of the Board and other English speaking Roman Catholic separate school supporters in Ottawa commenced an action against the School Board on 29th April, 1914, in which they asked for an injunction restraining the Board from employing unqualified teachers; an injunction restraining the Board from borrowing money on debentures whilst it neglected and refused to conform to, comply with and enforce Regulation No. 17; a mandatory order requiring the Board to conform to and enforce in the schools under its jurisdiction the said regulation; and for other relief. The Board by its defense disputed the validity of Regulation 17 contending that it was *ultra vires* and beyond the jurisdiction of the authority purporting to make the same and not warranted under the laws governing education in the Province of Ontario.

The action was tried by the Honourable Mr. Justice Lennox, the trial extending over four days. He held that Regulation 17 was valid and *intra vires* the legislature of Ontario. His judgment will be found in Volume 32 of the Ontario Law Reports at page 245. He summed the matter up in the following paragraph (32 O.L.R. p. 256):—

"The result is, that the defendants have wholly failed to show that Instruction or Regulation 17 of June, 1912, or of August, 1913, of the Department of Education for Ontario, or the manner in which these instructions have been or are being administered by the department, prejudicially affect any right or privilege with respect to Denominational Schools which the defendants as a class of persons had by law in the Province at the Union. And the result is too that it does not appear that these instructions or the manner of their administration or the statutes upon which they are founded are *ultra vires* of the Provincial Legislature. It follows, as a consequence, of course, that they must be obeyed. That they have been flagrantly disregarded—defiantly and ostentatiously repudiated and set at naught—by a majority of the Ottawa Separate School Board, is not and could not be denied. It would serve no useful purpose to particularize the evidence of this. It is for the Department, the law being declared, to see that the law is obeyed."

The School Board appealed and the First Appellate Division (the highest Court of Appeal in Ontario) unanimously reached the same conclusion and dismissed the appeal. The opinions of the judges will be found in volume 34 of the Ontario Law Reports at page 335. The judgment of the learned Chief Justice, dealing with the question of the validity of the Regulation, disposes so completely of many of the

contentions made by the Petitioners that his reasons on that branch of the case are here given in full:—

“In support of the second ground of objection it was argued that the legislation is *ultra vires* because it prejudicially affects a right or privilege of the French speaking people, contrary to the provisions of section 93 of the British North America Act.

Prior to the passing of that Act, there had been bitter controversies in this Province upon the subject of Roman Catholic Separate Schools, and these had been brought to a conclusion by the passing in 1863 of an Act intituled “An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools.” (26 Vict. Ch. 5).

The preamble to that Act is as follows:—

“Whereas it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools, and to bring the provisions of the law respecting Separate Schools more in harmony with the provisions of the law respecting Common Schools.” And, by section 1, sections 18 to 36 Ch. 65 of the Consolidated Statutes of Upper Canada, which dealt with the establishment and maintenance of Roman Catholic Separate Schools, were repealed, and certain other provisions were substituted for them. By sec. 26, it was provided that “the Roman Catholic Separate Schools (with their registers) shall be subject to such inspection as may be directed from time to time by the Chief Superintendent of Education, and shall be subject also to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada.”

The appointment of the Council of Public Instruction for Upper Canada was provided for by section 114 of the Consolidated Statutes of Upper Canada, Ch. 64, and it exercised its duties subject to all lawful orders and directions from time to time issued by the Governor.

By 39 Vict. Ch. 16, Sec. 1, the functions of the Council of Public Instruction were suspended, and all the powers and duties which it then possessed or might exercise by virtue of any Act in that behalf were devolved upon the Education Department, which was to consist of the Executive Council, or a Committee of it appointed by the Lieutenant Governor; and all the functions and duties of the Chief Superintendent of Education were vested in one of the Executive Council, to be nominated by the Lieutenant Governor and to be designated “Minister of Education”; and whenever, in any statute, by-law, regulation, deed, proceeding, matter or thing, the term “Council of Public Instruction” or “Chief Superintendent of Education” (as the case might be) or to the like signification, respectively occurred, the same were to be construed and have effect as if the term “Education Department” or “Minister of Education” was substituted therefor respectively; and the law has so remained down to the present time.

When the Separate Schools Act was revised in 1877 by Ch. 206, R.S.O. 1877, the provisions of the Act of 1863 were re-enacted with the changes rendered necessary by 39 Vict. ch. 16.

When the British North America Act was passed the law which provided for the establishment and maintenance of Roman Catholic Separate Schools was the Act of 1863, and the rights and privileges of the Roman Catholics of the Provinces with respect to Separate Schools were those and in my opinion those only, which they possessed under the Act of 1863, and the purpose of sub-sec. 1 of sec. 93 was to prevent, so far as the Province of Ontario was concerned, the enactment of any law relating to education which would prejudicially affect these rights or privileges.

The Separate Schools Act, besides providing for the establishment and maintenance of Roman Catholic Separate Schools, also provided for the establishment and maintenance of Separate Schools for coloured people and for Separate Schools for Protestants, and the principle applied in all cases was that these Separate Schools were to be brought into existence by the voluntary action of the respective classes, Protestants, Roman Catholics, and coloured people, which desired that they should be established.

Save only in the case of schools for coloured people, there is not to be found in the legislation prior to Confederation any recognition of the right to Separate Schools based upon linguistic or racial differences, or upon anything but religious differences.

The basic principle upon which the Separate Schools were founded was that Roman Catholics should not be required to contribute to the support of Common or Public Schools if they chose to establish Separate Schools for the education of Roman Catholic children, and that, in the event of their doing so, these schools should share in the Legislative grants for Common or Public School education, and that for their support the trustees of the schools should have power to impose, levy and collect school rates or subscriptions from persons sending children to or subscribing towards the support of the schools, and that they should have all the powers in respect of their schools that trustees of Common schools have and possess under the Acts relating to Common Schools. It was only persons who gave notice that they were Roman Catholics and supporters of Separate Schools that were exempted from the payment of rates imposed for the support of Common Schools, and the right to withdraw their support from the Separate Schools was given to persons who had given this notice but desired to withdraw their support.

It seems to me quite plain, therefore, that the effect of sub-sec. 1 of sec. 93 which provides that "nothing in any such law" (i.e. a Provincial Law in relation to education) "shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union," is, as far as the Province of Ontario is concerned, to restrict the exclusive authority to make laws in relation to education to the extent of prohibiting the making of any such law which would prejudicially affect the rights or privileges with respect to denominational schools which are conferred by the Act of 1863, and to that extent only; and that, subject to that limitation, the legislative authority of the Province as to education is "as plenary and as ample . . . as the Imperial Parliament in the plenitude of its powers possessed and could bestow:" per Sir Barnes Peacock in *Hodge v. The Queen* (1883) 9 App. Case 117, 132.

That it is only rights or privileges which exist as legal rights or privileges ("have by law") that are preserved is plain, and it was so held by the Judicial Committee in *City of Winnipeg v. Barrett* (1892) A.C. 445. See also *Brophy v. Attorney General of Manitoba* (1895) A.C. 202.

I am unable to find anything which supports the contention of the learned Counsel for the appellants that the right to use the French language in the Separate Schools of the Province was guaranteed by Treaty or otherwise to the French-speaking people, nor am I able to appreciate the contention that that is a natural right pertaining to them which the Legislature is powerless to impair or destroy.

However, even if it had been shown that, by the terms of the treaty which resulted in the cession of Quebec to Great Britain, this right had been guaranteed to the French-speaking people of the ceded territory, the new Constitution for Canada which was provided by the British North America Act would have abrogated those rights except in so far, if at all, as they are granted by it.

The British North America Act was the result of long deliberation and careful consideration by representatives of the various Provinces which were by it united into one Dominion, and great care was taken to provide for preserving the rights which religious minorities then possessed in matters relating to education. The use of the French language was also a question considered and dealt with; and, by section 133 the right was given to use that language in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec, and by any person or in any pleading or process in or issuing from any Court of Canada established under "this Act and in or from all or any of the Courts of Quebec."

It is inconceivable to me that the framers of the resolutions on which the Act was based would have embodied in them these provisions if they had any idea that the French-speaking people already enjoyed the greater rights, which according to the contention of the Appellants' Counsel, they possessed.

It was argued by Counsel for the Appellants that section 133 supports his contention; but that it is clearly not so I think. So far from supporting it, an intention is indicated that, except as to the matters dealt with by this section, the plenary power of the Legislature, within the ambit of its legislative authority, was to be unlimited as to what it should ordain as to the use of the French language.

The judgment of the learned trial judge is, in my opinion, right, and should be affirmed, and the appeal should be dismissed with costs."

Attention is also invited to the reasons for judgment delivered by the Honourable Mr. Justice Garrow at page 342 of the report. In a later case the Honourable the Chief Justice of the Common Pleas (Chief Justice R. M. Meredith) again upheld the validity of the regulation in the following paragraph (34 O.L.R. 630):

"The rocks upon which it was said that the Ottawa Separate Schools came near to foundering are said to be: the appointment of an inspector who was not a Roman Catholic and an overruling of the Board's desires as to the language to be used in teaching. Whether these things were necessary or unnecessary, gracious or ungracious, is a matter that does not in any way affect the legal question involved in these actions; if they were lawful, the plaintiff's appeal should not be to those who expound the law, but to those who make it, or to those who elect the makers, in regard to any grievances they may feel they have. That these things were not unlawful, the main purpose of Public Schools, and the very words of the Separate Schools Act, which I have read, seem to me to make very plain; and beside that, the judgment of the highest court of this province has decreed that they were lawful."

The result is that the validity of Regulation No. 17 has been affirmed by not less than seven judges of the Supreme Court of Ontario—by Sir William R. Meredith, C.J.O., Garrow J., MacLaren J., Magee J., and Hodgins J. of the Appellate Division and by Meredith C. J. C. P., and Lennox J. of the High Court Division. None of these Judges expressed any doubt on the point. With so many judicial opinions of such high standing in favour of the validity of the Regulation it is not considered necessary to elaborate further argument. The reasoning upon which these judgments proceeded is adopted.

It is further to be noted that section one of the Act dealing with Regulation 17 is of very limited effect. The Act was passed after judgment had been rendered by Mr. Justice Lennox declaring the Regulation valid. Section one does not in any way embarrass the Board in contending on appeal in any higher Court that the Act is *ultra vires* as that question is reserved by the express language of the section. It merely affirms the judgment in so far as it determined that the provisions contained in the Regulation could be brought into effect by Regulation under the Department of Education Act and that the proper procedure had been adopted for that purpose.

Under the Department of Education Act Regulations may be made for the establishment, organization, government, courses of study and examination of public, separate and other schools. A regulation to be valid and to remain in force must (1) be made by the Minister; (2) be approved by the Lieutenant Governor in Council; (3) be laid before the Legislative Assembly within a time fixed by the Act; and (4) not be disapproved by the Assembly. Evidence was given at the trial to show that all these provisions had been complied with. The Regulation would have equal force in law if section one of the Act of 1915 had not been passed.

Section three of the Act authorizing the transfer of the powers and duties of the Board to a Commission will now be considered. It must be read along with section two of the Act and both sections must be applied to the circumstances existing at the time the Act was passed. When this is done it is clear that section three was passed for the purpose of securing to all the Roman Catholic School supporters in Ottawa their rights and privileges with respect to denominational schools rather than to take away such rights and privileges or to "prejudicially affect" them.

In Ottawa it happens that the majority of the supporters of the Roman Catholic Schools speak the French language and the minority the English. But the minority is by no means small. Indeed if they are judged by their contributions towards the upkeep of the Roman Catholic Separate Schools the minority becomes the majority. Judged, however, by voting power the majority are of French descent. The result is that the French-speaking adherents of the schools control the election of Separate School trustees and are thus in a position to dominate the situation. But minority members of a class who contributed their moneys toward the establishment and maintenance of separate schools have, equally with the majority, rights and privileges which must be respected under the British North America Act. They are not to be deprived of those rights and privileges by oppression and unlawful conduct on the part of the majority acting either directly or through the medium of a subservient Board of Trustees. If they are so deprived of their legal rights they are entitled to protection from the Courts and if the machinery of the Courts is not sufficiently elastic to secure to them a full measure of relief they are entitled to relief by legislation.

As already mentioned, R. MacKell and other English-speaking Roman Catholic Separate School supporters commenced proceedings in the Supreme Court of Ontario to assert their rights. On their application the Honourable the Chief Justice of the King's Bench (Sir Glenholme Falconbridge) and later the Honourable Mr. Justice Hodgins made orders, dated respectively April 29, 1914, and May 20, 1914, restraining the Board until the trial or other final determination of the action from continuing in its employ or paying the salaries of unqualified teachers or the salaries of teachers who refused to conform to the regulations of the Education Department and restraining the Board from raising money on debentures. Instead of carrying out the spirit of these orders the Board refused to pay any of the teachers, including the lay teachers in English schools under their charge, notwithstanding that such teachers were qualified and were obeying the regulations. Later, in July, 1914, during a postponement of the trial made at the Board's request, Mr. Genest, the Chairman of the Board, professing to act under a resolution passed by a majority of the Board but against the protest of the minority, dismissed all the qualified lay teachers in the Board's employ, with the result that all the English schools remained closed when they should have been reopened after the summer vacation. A resolution authorizing Mr. Genest so to act was passed when the application for an injunction was pending before Mr. Justice Hodgins. The trial Judge, Mr. Justice Lennox, referring to the resolution, said that it—

"was vicious and unlawful *per se* for its exercise was intended, upon the face of it, to contravene and override the injunction order of the Court should it be issued There is a palpable absence of good faith in the whole transaction; it is contrary to the spirit and intent of the injunction order; it is con-

trary to what was necessarily implied upon the adjournment; and it has created an intolerable state of things which I feel I have power to and ought to remedy." (32 O.L.R. 250.)

The learned judge accordingly made an interim order dated 11th September, 1914, directing the Board to open the schools not later than September 16, 1914, with qualified teachers in charge; to conduct the schools according to law; to permit and facilitate the return of the duly qualified teachers who in the preceding month of June were in charge of the schools to their former positions as teachers; and he restrained the Board from interfering with or molesting the teachers in the discharge of their duties. In his judgment delivered after the completion of the trial he repeated these provisions and added others. In his reasons for judgment he expressed the hope "that before long the Board may recognize the wisdom of resuming the exercise of its functions according to law." (32 O.L.R. p. 258). This hope was not however realized. The Board permitted the former qualified teachers in the English schools to return to their classes thus enabling the schools to be opened but there was no proper observance by the Board of the school law and regulations. The Board did not exclude the teachers and pupils from the English schools, but it did not pay the teachers their salaries nor did it enforce Regulation 17 in the English-French schools. Such a condition could not last long. It was impossible to manage the schools under court orders through the medium of a Board a majority of whose members were looking for opportunity to punish the minority for asserting their rights in the courts. The situation would become worse as time went on. It became obvious that new trustees must replace the trustees who were refusing to administer the trusts conferred on them by the Separate Schools Act. Legislation was necessary to enable new trustees to be appointed. Accordingly the Legislature passed the Act of 1915. It recited the litigation between R. MacKell and others and the School Board and also contained the following recital:

"And whereas the said Board has failed to open the schools under its charge at the time appointed by law and to provide or pay qualified teachers for the said schools and has threatened at different times to close the said schools and to dismiss the qualified teachers duly engaged for the same."

The Act proceeded by section 2 to declare it to be the duty of the Board to conduct the schools under its charge according to law with qualified teachers in charge; to continue to employ the qualified teachers then in the employ of the Board at the salaries then paid unless the Minister of Education otherwise approved; to engage such additional teachers as might be necessary; to pay the salaries of all qualified teachers as they became due; and to do other necessary acts.

It was hoped that the Board would proceed at once to perform these duties. Fearing that it might not, section three, the section now assailed, was passed whereby if the Minister of Education was of opinion that the Board failed to perform its said duties he could with the approval of the Lieutenant Governor in Council, appoint a Commission; vest in the Commission all or any of the powers possessed by the Board; suspend or withdraw all or any part of the rights, powers or privileges of the Board; restore the whole or any part of same and re-vest the same in the Board whenever the Minister might think it advisable; and make such use of the Legislative grant for said schools or any of them as the Minister might in writing direct.

The purpose of these sections is plain. They were passed to secure for the Roman Catholic Separate School supporters in Ottawa the right to have their children taught in schools according to law. The machinery in force in 1915 to secure to them that right had broken down and new provisions were necessary to remedy this defect. The legislation was intended to overcome the difficulty created by a majority of the School Trustees acting illegally, and depriving a large section of the Roman Catholics in Ottawa of their rights. It is true that another section of Roman Catholics in Ottawa submitted to and even encouraged the action of the Board but they merely approved an abuse of power by the trustees. In any event they could give no consent or approval that would deprive the minority of their rights.

Besides the right of the minority there was also the public interest to be considered. Schools are established to ensure the proper education of all children thereby making them good and efficient citizens. There is no paramount right in the parent to determine that his child shall go uneducated or to constitute himself the sole judge as to the education the child shall receive. This principle was recognized at Confederation as fully as it is to-day. The Roman Catholic Separate Schools were then, as the Chief Justice of Ontario points out in the passage of his judgment above quoted, subject to regulation by the Council of Public Instruction which then filled the place now occupied by the Department of Education. The majority of the Trustees for a particular school could not then any more than they can now carry on the school in defiance of the school law and regulations. Legislation which deposes trustees who attempt so to carry on a school and substitutes for them trustees who will obey the law cannot be said to be "prejudicial"—it is in fact beneficial. And if a majority of the electors deliberately appoint trustees who will not perform the duties they owe either to the minority of the class or to the public at large other means of appointing trustees must be found.

But this question like the question as to the validity of Regulation 17 has been contested by the Board in the Courts and is now determined adversely to the Board's contention.

The Commission on its appointment took control of the moneys on deposit to the credit of the Board in the Quebec Bank and it claimed the right to receive the Roman Catholic Separate School rates collected by the City of Ottawa. The Board instituted actions against the Commission, the Quebec Bank and the City of Ottawa for the express purpose of establishing its rights as against the Commission to manage the school funds. The trial took place at Ottawa on 30th October, 1915, before the Honourable the Chief Justice of Common Pleas (Chief Justice R. M. Meredith) and after reserving the matter for consideration the learned Judge delivered written reasons for judgment in which he upheld the validity of section three and directed that the actions **brought by the Board** should be dismissed. His reasons for judgment will be found in volume 34 of the Ontario Law Reports, page 624. At page 631 he says:

"The removal of trustees who fail or refuse to perform the duties of their office, and especially so when they do so contumaciously, is but a familiar, appropriate, and sometimes necessary legal method; and for a High Court of Parliament, Provincial or Federal, to remove trustees filling a public office, even though elected to that office, and the more so if elected with a view to continuing to refuse or fail to perform such duties in the face of a judgment of a Court of competent jurisdiction, making those duties plain, could not be an infringement upon any legal right, but must be an endeavour to maintain and enforce it; and the mere fact that an appeal may be taken, or is contemplated, against such judgment, is no kind of excuse for disregarding it, unless its effect is suspended, during the appeal, by law, or by a competent court; the only legal and proper course, especially for a public officer, is to yield obedience to that judgment until it is reversed, if ever it should be; and that the plaintiffs should have done, and in doing would have remained in office."

The Board appealed from this judgment and the Appellate Division of the Supreme Court of Ontario dismissed the appeal on 3rd April, 1916. The Appellate Court reached the conclusion that the effect of the statute is to safeguard rather than prejudicially affect the rights and privileges which at Confederation were secured to Roman Catholics in Ontario. The question was one entirely suitable for the Courts to determine. The School Board itself selected that forum, and a judgment adverse to the Board has been affirmed on appeal. The Board should not now be permitted to select another forum for the decision of the same question. The question is one of fact—prejudice or no prejudice—which can be determined much better by the Courts than by the Governor General in Council.

Besides asserting that the Statute of 1915 is *ultra vires*, the Petitioners base their request for disallowance partly on the ground that the Act should be disallowed under the discretionary power which it is claimed the Governor General in Council may constitutionally exercise with respect to *intra vires* Provincial legislation. When reporting on the petition to disallow the Statute passed by the Legislature of Ontario 7 Edward VII (1907) Chap. 15 entitled "An Act respecting Cobalt Lake and Kerr Lake", the then Minister of Justice, Sir Allen Aylesworth, in his report dated 21st April, 1908, referred to former reports on other Provincial legislation made by his predecessors, the Hon. Mr. Mills and Sir Charles Fitzpatrick as follows:

"The undersigned shares the views expressed by Mr. Mills and Mr. Fitzpatrick. In his opinion it is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of annulling Provincial legislation, even though your Excellency's Ministers consider the legislation unjust or oppressive or in conflict with recognized legal principles so long as such legislation is within the power of the Provincial Legislature to enact.

The undersigned is of the opinion that where an act is of a merely domestic or local character and does not affect any matter of Dominion interest your Excellency's Government ought not to review the policy or propriety of the measure which is exclusively a matter of provincial concern, and he accepts the general view that it is not the office or right of the Dominion Government to sit in judgment considering the justice or honesty of any act of a provincial legislature which deals solely with property or civil rights within the Province."

Sir Allen Aylesworth when reporting on 29th March, 1910, with respect to the proposed disallowance of the Statute of Ontario passed in 1909, Chap. 19, being an Act to amend the "Act to provide for the transmission of electrical power of Municipalities" repeated this view in the following language:

"In answer to the several petitions and complaints which have been submitted the Government of Ontario refers to a number of precedents to be found in the opinions of the Ministers of Justice upon provincial legislation submitted to the Governor General in Council, wherein the view is expressed that the Governor General cannot consistently exercise the power of disallowance upon any ground affecting the justice or expediency of a local statute in relation to matter, constitutionally committed to the Legislatures, and this view has been very recently re-affirmed by your Excellency's Government upon a report of the undersigned in relation to an Ontario Statute of so late a date as 1907. Many cases might be quoted in addition to those so referred to in which the Governor General has declined to act upon such reasons as affording ground for disallowance. The undersigned, therefore, consider it impossible in accordance with both practice and principle that your Excellency's Government should sit in judgment upon the propriety of this measure".

The present Minister of Justice (Hon. Mr. Doherty) when reporting on 20th January, 1912, on the petition to disallow the Statute of the Province of Alberta passed in 1910 relating to the Alberta and Great Waterways Railway Company said—

"There was considerable discussion at the hearing as to the practice and precedents in respect of disallowance of legislation by reason of unjust provisions or because of its interference with vested rights or the obligations of contract, and a recent report of the predecessor in office of the undersigned was quoted as showing that the Governor General should in no case be advised to disallow for such reasons. It is true as has been frequently pointed out, that it is very difficult for the Government of the Dominion, acting through the Governor General, to review local legislation or consider its qualities upon

questions of hardship or injustice to the rights affected, and this is manifest not only by expressions in reports of the Minister, but also by the fact that but a single instance is cited in which the Governor General has exercised the power upon these grounds alone.

The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes *intra vires* of the legislatures. Doubtless, however, the burden of establishing a case for the execution of the power lies upon those who allege it; and although the undersigned is not prepared to express approval of the statute in question, which he feels must be regarded as a most remarkable execution of legislative authority, he is nevertheless not satisfied that a sufficient case for disallowance has been established either on behalf of the bondholder, the Bank, or the Companies, especially when it is considered that the legislation sanctioned by the Assembly evidences as it does a very deliberate and important feature in the policy of the local Government."

It is not necessary in this case to consider whether the limits of the Constitutional right to disallow Provincial Legislation are those indicated in the reports of Sir Allen Aylesworth or those indicated in the report of the Honourable Mr. Doherty. The Act in question should not be disallowed in either view. Assuming it is *intra vires* it expresses "a very deliberate and important feature in the policy of the local Government" and should not be interfered with. The Governor General in Council and the Dominion Parliament are by subsections three and four of section 93 given express jurisdiction over certain provincial legislation relating to education. Provincial legislation should not be interfered with except in cases falling within those subsections and then only in the manner therein provided.

The Undersigned submits that the Act in question should not be disallowed because—

1. It is *intra vires* of the Ontario Legislature and has been so held by the Courts of Ontario.

2. The question is one suitable for the Courts to determine as the validity of the Statute depends in one view on a question of fact—prejudice or no prejudice.

3. The terms of the regulation and the statute are acceptable to and protect the rights and privileges of a very large section of the Roman Catholics in Ontario.

4. Regulation 17 was made pursuant to the settled and definite policy of the Government which policy was in 1911 approved by the unanimous vote of the Assembly.

5. Regulation 17 was in force three years before the Statute was passed and will remain in force even if the Statute is disallowed.

6. The Statute was assented to on the 8th April, 1915. The Commission was not appointed under section three until 20th July, 1915. If it was intended to ask for disallowance, the Petition should have been presented at an earlier stage before the Commission was appointed and placed in charge.

7. Disallowance of the Statute of this date would restore a situation described by the trial Judge as intolerable.

8. The Board decided to test the validity of the Statute in the Courts and it has been decided that the Statute safeguards the rights and privileges of Roman Catholics in Ontario rather than prejudicially affects them and the Governor General in Council should not in effect hear an appeal from the judgments pronounced by the Courts.

9. Provincial legislation affecting education should not be disallowed unless it plainly contravenes subsection one of section 93 of the British North America Act. Subsections three and four of section 93 give certain express authority to the

Governor General in Council and to the Dominion Parliament over Provincial legislation affecting education, and no Provincial legislation which is *intra vires* should be interfered with unless it comes within those subsections and then only in the manner therein provided.

All of which is respectfully submitted.

W. H. HEARST,
Prime Minister.

Dated at Toronto, this 4th day of April, 1916.

6 GEORGE V, 1916

(Approved 4 May, 1917.)

DEPARTMENT OF JUSTICE, 26th April, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario passed in the Sixth year of His Majesty's reign (1916), and received by the Secretary of State for Canada on 5th May last, and he is of opinion that these statutes may be left to such operation as they may have, with the exception of

Chapter 20, intituled "An Act respecting the Public Development of Water power in the vicinity of Niagara Falls"; and

Chapter 21, intituled "An Act to regulate the use of the Waters of the Province of Ontario for Power Development Purposes"; as to which a petition of the Electrical Development Company of Ontario, Limited, for disallowance has recently been received and is now under consideration. These two statutes are therefore reserved for a separate report.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government.

Humbly submitted,
CHAS. J. DOHERTY,
Minister of Justice.

(Approved 4 May, 1917.)

DEPARTMENT OF JUSTICE, 33rd May, 1917.

To His Excellency the Governor General in Council:

The undersigned received on 21st ultimo a petition of the Electrical Development Company of Ontario, Limited, addressed to Your Excellency in Council praying for the disallowance of two statutes of the Ontario Legislature, assented to on 27th April, 1916, namely:—

Chapter 20, intituled "An Act respecting the Public Development of Water power in the vicinity of Niagara Falls"; and

Chapter 21, intituled "An Act to regulate the use of the Waters of the Province of Ontario for Power Development Purposes."

These statutes were received by the Secretary of State for Canada on 5th May, 1916, and the year limited for disallowance is therefore just about to expire.

The undersigned submits herewith the petition and exhibits which accompany it. Copy of the petition was communicated by the Deputy Minister of Justice to the

Attorney General of Ontario by letter of 24th ultimo, with a statement that the undersigned would be pleased to have the observations of the local Government upon the subject, and Mr. Newcombe on 2nd instant received a reply, copy of which is also submitted, in which the Attorney General states that in view of the limited time to elapse during which the power of disallowance may be exercised he does not wait for the transmission of a despatch from his Government in reply to the petition, but submits the observations set forth in his letter as an expression of the provincial views.

The undersigned submits also a printed "memorandum concerning recent provincial legislation and executive action in Canada with special reference to the Niagara question" which has been delivered in support of the petition.

The grounds upon which the petition proceeds cannot perhaps be restated more conveniently than by reference to the petition itself. They involve a denial of the authority of Ontario to enact the statutes in question, and also an attack upon the quality of the legislation as unjustly interfering with vested rights and obligations of contract, and as prejudicial to the general public interest.

The undersigned is disposed to think that the questions submitted which relate to the enacting power of the legislature may be determined more conveniently and more satisfactorily by the judicial tribunals than by Your Excellency in Council. It is alleged that the Attorney General withheld his fiat, in consequence of which the Company was unable to proceed with an action for declaration of its rights; and that an action against the Attorney General failed on the ground that the procedure was not admissible. The undersigned apprehends, however, that means may be found, independently of any consent of the Attorney General, by which the courts could be afforded an opportunity to grant any relief which may be consequent upon the view, if it be upheld, that the Acts complained of are *ultra vires* of the legislature; and the difficulties and inconveniences of an adjudication of the legal questions by Your Excellency in Council are such as to convince the undersigned of the inexpediency of a recommendation for disallowance based upon any of the constitutional objections which are submitted.

When it is said that the legislation is bad in principle, unfair and confiscatory, because it is intended to take away or prejudice rights acquired by the Company under its contract to which the Province is in effect a party; and especially so in view of the fact that the Company has made very considerable expenditures and incurred large obligations upon the security of the rights or concessions which it had by means of the contract obtained. It would seem from the Attorney General's letter that there are questions of fact outstanding as between the petition and the allegations of the Government, and these Your Excellency's Government has no means to try; but assuming the differences of fact to be eliminated in favour of the petition, the undersigned, while he does not hesitate to express strong disapproval of legislation which is intended to break down or take away legitimate contract rights without compensation, is not prepared to recommend this consideration as a ground for the exercise of the power of disallowance in the circumstances of this particular case. The legislature is directly responsible for the policy, merits and justice of its legislation. Its powers are plenary and exclusive within the limits by which they are confined, and although doubtless they must be exercised subject to the control of the Governor General in Council, that control cannot in the opinion of the undersigned be constitutionally exercised upon the principle of substituting the judgment of the Dominion Executive for that of the local legislature, in relation to matters which are strictly confined to the field of local self-government.

It is contended that the legislation will have effect to impair the financial credit of His Majesty's Governments of Ontario and of Canada, and that the Acts are against the general interests of the Dominion. These are grave allegations, and if the undersigned were satisfied that Dominion interests are seriously imperilled he would not hesitate to advise the exercise of Your Excellency's prerogative, but the undersigned is not convinced that the public credit of the Dominion will be

substantially impaired by the legislative breaches of contract, such as they are, which are evidenced by the statutes in question.

It will be observed that the petitioners complain not only of the two statutes of 1916 above named, but also of other legislation passed at the recent session of 1917, and the petitioners pray in the alternative that Your Excellency in Council may be pleased to direct that the question of the constitutional validity of all these Acts be referred to the Supreme Court of Canada. The undersigned reserves consideration of the Statutes of 1917, and of the question of reference to the Supreme Court, but he is of opinion, for the reasons above mentioned, that it would be inadvisable to exercise the power of disallowance with regard to the said statutes, Chapters 20 and 21 of 1916.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government, and to Mr. D. L. McCarthy, K.C., of Toronto, the petitioners' solicitor.

Humbly submitted,

C. J. DOHERTY,
Minister of Justice.

April 30th, 1917.

E. L. NEWCOMBE, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ont.

DEAR SIR,—I beg to acknowledge receipt of your letter of the 24th instant, enclosing copy of the petition of the Electrical Development Company of Ontario praying for the disallowance of The Water Powers Regulation Act, 1916, and other local statutes.

In view of the limited time yet to elapse during which the power of disallowance may be exercised, I am not waiting for the transmission of the despatch from this Government in reply to the petition, but will ask you to lay this letter before the Minister of Justice as an expression of the views of the Government of Ontario.

In pursuance of general policy the Government of Ontario promoted and the Legislature passed the Acts in question and the said Acts deal with property and civil rights in the Province of Ontario, matters over which by The British North America Act, Section 92, sub-head 13, the Province has exclusive legislative jurisdiction.

The matters dealt with by the Acts also come clearly within the provisions of sub-head 16 of the same section, that is, "matters of a local and private nature."

The Acts referred to do not therefore fall within the list of cases referred to by the then Minister of Justice in a despatch from Ottawa dated the 8th June, 1868, and approved by His Excellency the Governor in Council on the following day in that they are not altogether illegal or unconstitutional nor are they illegal nor unconstitutional in part being in fact both legal and constitutional nor do they conflict with legislation of the Dominion Parliament nor do they affect the interests of the Dominion generally.

The Hon. Edward Blake, when Minister of Justice, in reporting on a petition for the disallowance of an Act of the Province of Ontario (38 Victoria chapter 75) said:—

"The undersigned does not conceive that he is called upon to express an opinion upon the allegations of the petitions as to the injustice alleged to be effected by the Act. This was a matter for the local Legislature."

The late Sir John Thompson, then Minister of Justice, in his report to Council upon the Act (48 Victoria, Cap. 5), an Act in respect of certain sums of money ordered

by the Legislative Assembly to be impounded in the hands of the Speaker, to which objections had been taken on the ground that it was an interference with the private rights of a creditor, used these words:—

“Without expressing any opinion as to whether the Act is a just measure or not, the undersigned is of the opinion that it is within the undoubted legislative authority of the Legislature of that Province and therefore respectfully recommends that it be left to its operation.”

In *Hodge v. The Queen*, 9 App. Cas. at page 132, Sir Barnes Peacock, in delivering the judgment of the Judicial Committee of the Privy Council, states:—

“When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion.”

In *Attorney General of Canada vs. Attorney General of Ontario, et al* (1898), A.C. at page 713, Lord Herschell, in delivering the judgment of the Judicial Committee of the Privy Council, says:—

“The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of legislation conferred. The Supreme legislative power in relation to any subject-matter is always capable of abuse, but it is not to be assumed that it will be used improperly; if it is, the only remedy is an appeal to those by whom the Legislature is elected.”

The Hon. A. B. (now Sir Allen) Aylesworth, when Minister of Justice, in his report upon the petition to disallow two Ontario Statutes (6 Edward VII, Cap. 12, and 7 Edward VII, Cap. 15), used the following language:—

“It is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of annulling Provincial legislation even though Your Excellency's Ministers consider the legislation unjust, or oppressive, or in conflict with recognized legal principles, so long as such legislation is within the power of the Provincial Legislature to enact it.”

He amplified this language in a forcible and telling speech made in the House of Commons, March 1, 1909, and reported in *Hansard* at page 1750, *et seq.* to which the Dominion Government is respectfully referred.

In 1901 the Hon. David Mills, then Minister of Justice, in reporting upon legislation of a somewhat similar character, used this language:—

“The undersigned conceives that Your Excellency's Government is not concerned with the policy of this measure. It is no doubt *intra vires* of the Legislature and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the Legislature, and the Acts of the Legislature may be ultimately judged by the people. The undersigned does not consider, therefore, that Your Excellency ought to exercise the power of disallowance in such cases.”

In the same year, speaking with reference to legislation of the Province of British Columbia which was then under consideration, the Hon. D. Mills said:—

"The undersigned bases his refusal to recommend disallowance upon the fact that the application proceeds upon grounds affecting the substance of the Act with regard to matters undoubtedly within the Legislative authority of the Province and not affecting any matter of Dominion policy. It is alleged that the Statute affects pending litigation and rights existing under previous legislation and grants from the Province. The undersigned considers that such legislation is objectionable in principle and not justified unless in very exceptional circumstances, but Your Excellency's Government is not in any wise responsible for the principle of the legislation and, as has been already stated in this report with regard to an Ontario Statute, the proper remedy in such cases lies with the legislature or its constitutional judges."

A year later the Hon. Chas. (now Sir Charles) Fitzpatrick, reporting upon British Columbia legislation, used these words:—

"It appears that litigation was pending between the Government and the petitioners, at the time of the passing of the Act, with regard to the petitioners' liability to pay these royalties, and no doubt a very strong case is made out by the petitioners in support of the view that the legislature should have allowed the existing law to operate and should not have undertaken to legislate so as to diminish or affect existing rights. The undersigned cannot help expressing his disapprobation of measures of this character, but there is a difficulty about Your Excellency in Council giving relief in such cases without affirming a policy which requires Your Excellency's Government to put itself to a large extent in the place of the Legislature, and judge of the propriety of its Acts relating to matters committed by the constitution to the exclusive legislative authority of the Province."

This Government therefore while it considers the Acts sought by the petitioners to be disallowed to be both right and just, entirely disavows the notion of the Petitioner in the present case that it is the office of the Dominion Government to sit in judgment on the right and justice of the Act of the Ontario Legislature.

With regard to the allegations set out in paragraphs 2, 3, 4, 5, 6, etc., it may be said that the agreement referred to bound the Commissioners of the Victoria and Niagara Falls Park and the Crown only so far as it was represented by the said Commissioners acting within their capacity in that regard.

The Construction system contemplated by the Ontario Niagara Power Development Act, 1916, which Act, the Petitioners seek to have disallowed, does not authorize the said Commissioners to do any act whatsoever in contravention of the provisions of the said agreement any more than would the Power system originating at Chaudiere Falls, and section 7 of the said Act was simply introduced *ex abundantia cautela* and not because it was necessary.

In any case the matters dealt with in paragraph 14 of the Petition and also in paragraphs 15, 16 and 17 are strictly matters dealing with the property and civil rights and therefore as hereinbefore set forth entirely within the jurisdiction of this Province. The Petitioners' prayer suggesting that the effect will be to impair the financial credit of His Majesty's Government of Ontario and Canada can best be answered by saying that the Government of the Province of Ontario is the proper guardian of its credit, financial and otherwise, and that the credit of the Government of Canada is not affected by these Acts, nor are the said Acts contrary to the policy of the Canadian constitution, which Constitution excepting so far as they deal with property and civil rights or are matters of a local and private nature they do not affect, nor are they ultra vires of the Legislature of the Province of Ontario, either for the reasons set forth in the said Petition, paragraph 19, or for any other reason.

The reasons set forth in paragraph 19 of the Petition for the claim that the said Acts are ultra vires have been already adversely dealt with in the Judgment of the Appellate Division of the Supreme Court of the Province of Ontario pronounced on the 13th day of January, 1917, and referred to in paragraph 17 of the said petition. See 38 Ontario L.R., p. 383.

With regard to the request in the said Petition for a reference by the Governor in Council under The Supreme Courts Act, section 60, it has never been the practice for the Governor in Council to refer the constitutionality of Provincial Acts in which the Dominion is not interested, to the Supreme Court of Canada, and the Government of this Province respectfully submits that any such reference of the Acts in question would be a distinct and unwarranted interference with the rights of the Ontario Legislature and as the Judgment upon such references is advisory only, would also in its practical effect be futile.

In addition to the foregoing considerations it may be pointed out that the petition contains numerous misstatements of fact. The Government does not admit it would have no right to authorize the construction of works in the Queen Victoria Niagara Falls Park by the Hydro-Electric Power Commission but as a matter of fact it had not done so nor is any such action contemplated.

It is not true as alleged in paragraph 10 of the Petition that the Petitioner has faithfully paid the rental specified in the agreement with the Commission and has observed each and every stipulation therein contained.

It is untrue as alleged in paragraph 12 of the Petition that any allowance for the exportation of electrical power by the Electrical Development Company is in force and I believe it is untrue that the Petitioner is an exporter of electrical power itself although supplying power for exportation to another company upon the Canadian side of the River.

It is untrue that the Petitioner carries on an undertaking extending beyond the limits of the Province, and the Company is an Ontario Company incorporated under Provincial legislature, exercising its franchise under a license from the Provincial Commission and subject in every respect in its management and in the exercise of all its power, to the legislative authority of the Province.

It is untrue that The Ontario Niagara Development Act purports to authorize a violation of any Dominion legislation.

It is untrue that The Ontario Niagara Development Act purports to confiscate or destroy any property of the Petitioner, nor does The Water Power Regulation Act purport to confiscate or destroy any such property.

The Government of Ontario have had to take into consideration many circumstances in dealing with the conservation of the water powers of the Niagara River and in view of the restriction of the Province to the use of 36,000 cubic feet per second by the International Waterways Treaty, it becomes of supreme importance to the people of Ontario that the maximum amount of power should be developed from the available supply of water.

The Water Powers Regulation Act was passed with a view to ascertaining the rights of the three companies developing power at Niagara Falls and in order to provide particular means of ensuring that they use no more water than they are entitled to use and that their works are constructed and operated with such a degree of efficiency as to ensure an economical use of the water they are entitled to take.

The Act provides for judicial construction of their franchise and for compensation where in the public interest it is necessary that their rights under their agreement with the Park Commission should be further restricted.

At the present time there is an urgent demand for more power for the manufacturers of Ontario and especially in view of the vital importance not only to the Province but to the Empire, of the manufacture of munitions of war, the Government might have been justified in taking much stronger measures than the legislation in question in order to ensure due economy and efficiency in the development

of power at Niagara Falls. While I do not admit, for the reasons stated in the earlier part of this letter, that the Dominion Government should consider the justice or injustice or expediency or otherwise of Provincial legislation so long as it is clearly within the legislative authority of the Province, I desire to point out:—

1st. That the Petitioners are according to tests made under the authority of The Water Powers Regulation Act and in deliberate violation of their agreements with the Park Commission, appropriating power to which they are not entitled and developing more than 20,000 cubic feet more than the amount stipulated for in their contract.

2nd. That the Company is a defaulter to a large amount in the payment of rentals provided for in the contract.

3rd. That the Petitioners have forfeited the franchise granted them by the Queen Victoria Niagara Falls Park Commission by acts of trespass and by the non-payment of the stipulated rental.

4th. That the Petitioners have up to the present time done nothing and proposed nothing to assist the Hydro-Electric Power Commission or the Government of Ontario in solving the problem of an adequate supply of power to meet the extraordinary demands occasioned by the war.

I cannot believe that the Government of Canada would for a moment consider the possibility of the disallowance of the legislation in question, in as much that such action would be fraught with consequences of a most serious character and would have the effect of intimating to such companies as that of the Petitioners, that they may with impunity defy any control on the part of the Executive Government or Legislature of the Province while at the same time disregarding the fulfillment of their contractual obligations.

Yours truly,

I. B. LUCAS,

Attorney General.

PETITION for disallowance of certain Acts of the Legislature of the Province of Ontario, known as The Ontario Niagara Development Act, The Water Powers Regulation Act, 1916, being 6 George V, Chapters 20 and 21 respectively of the Statute of Ontario, 1916, the Ontario Niagara Development Act, 1917, and the Water Powers Regulation Act, 1917.

To His Excellency the Governor General in Council:

The humble petition of the Electrical Development Company of Ontario, Limited, a Corporation having its Head Office in the City of Toronto, in the Province of Ontario,

SHOWETH:

1. That your petitioner is a company incorporated by Letters Patent dated the 18th day of February, 1913, issued pursuant to the Ontario Companies Act, and carries on the business of developing electrical energy by water power and of acquiring and maintaining transmission lines for the delivery of such power, their power plant being situated on the banks of the Niagara river in the Queen Victoria Niagara Falls Park, in the Township of Stamford, in the County of Welland and Province of Ontario.

2. That the Commissioners of the Queen Victoria Niagara Falls Park are a corporation created by an Act of the Legislature of the Province of Ontario, being the Statute 50, Victoria, c. 13, and the existence of the said corporation is continued by Chapter 50 of the Revised Statutes of Ontario, 1914. Under the said Acts the

said Commissioners are invested with the title and the management of the Queen Victoria Niagara Falls Park, subject to the beneficial interest of His Majesty therein and had or assumed authority to enter into the agreement hereinafter mentioned, by virtue of an Act of the Legislature of the Province of Ontario, being 62 Victoria, c. 11, s. 36, of which provides as follows:—

"36. The said Commissioners with the approval of the Lieutenant-Governor in Council may enter into an agreement or agreements with any person or persons, company or companies, to take water from the Niagara river, or from the Niagara or Welland rivers, at certain points within or without the said park for the purpose of enabling such person or persons, company or companies, to generate, within or without the park, electricity or pneumatic, hydraulic or other power, conducting or discharging said water through and across the said park, or otherwise in such manner, for such rentals and upon such terms and conditions as may be embodied in the agreement or agreements, and as may appear to the Lieutenant-Governor in Council to be in the public interest."

3. That in pursuance of the said enactment, the Commissioners of the Queen Victoria Niagara Falls Park, on behalf of themselves and those others, who for the time being might be Commissioners of the said park, or other representatives of the Government of Ontario, entered into an agreement dated the 29th day of January, 1903, with William MacKenzie, Henry M. Pellatt and Frederic Nicholls, their heirs, executors and assigns (therein and hereinafter called "the Syndicate"). By the said agreement it was provided, subject to the approval of the Lieutenant-Governor in Council being obtained, that the Syndicate should for fifty years have the right to construct work and to divert thereby through the park from the waters of the Niagara and Welland rivers, water for generating electricity for commercial use.

4. That by paragraph (1) of the said agreement the said Commissioners covenanted with the said Syndicate, as follows:—

"For the purpose of generating electricity and pneumatic power or any other power to be transmitted, and capable of being transmitted to places beyond the park, the Commissioners hereby grant to the Syndicate, subject to the consent and approval of the proper authority, and save as hereinafter limited, a license irrevocable to take from the waters of the Niagara river within the park a sufficient quantity of water to develop 125,000 electrical, or pneumatic or other horse power for commercial use. Provided also that these presents are not to be construed as expressing or implying any covenants by the Commissioners for title or quiet possession."

The expression "save as hereinafter limited" relates solely to the word "irrevocable."

5. That by paragraph 16 of the said agreement, the said Commissioners covenanted with the said Syndicate, as follows:—

"16. The Commissioners will not themselves engage in making use of the water to generate electric, pneumatic, or other power except for the purposes of the park, provided that in case the said Commissioners shall have granted or at any time may have granted to any other person or corporation license to use the waters of the said Niagara or Welland rivers, and by reason of failure of such person or corporation to carry on the works so licensed the said Commissioners find it necessary to forfeit said license and take over said works, this clause shall not prohibit said Commissioners from operating such works for the general and transmission, sale or lease of electricity or power."

6. That by paragraph 20 of the said agreement, the said Commissioners covenanted with the said Syndicate, as follows:—

"20. So long as this agreement is in force the Commissioners undertake and agree that the amount of rentals which may be fixed and charged for the

right to use the waters of the Niagara or Welland river within the park for the purpose of generating electricity by any other company or person, shall not be at less rentals than is provided and reserved by these presents, and further, that any such company shall be subject to the like restrictions as in paragraph 21 of this agreement. Provided, however, that notwithstanding anything, in this paragraph contained, the rentals so to be fixed and charged against any other Company or person, may be reduced, below the rentals provided and reserved by these presents, so far only as such reduction may fairly and reasonably be allowed in respect of the increased cost of the construction of the tail race or tunnel within the park, by reason of its greater length or other ground of expense in its or their construction, whether required for supply or waste through the park to the point of discharge into the Niagara river in excess of the distance between the power house of the Canadian Niagara Power Company and the point of discharge into the Niagara river, such reduction not to be of an amount sufficient to give any undue advantage as against the Syndicate except by reason of such increased cost of tail race or tunnel, or both, as the case may be."

7. That in consideration of the terms of the said agreement, the said Syndicate undertook to pay an annual rental of \$15,000, with further charges of .50 or more per horse-power according to the quantity of electricity generated above 10,000 horse-power and by paragraph 27 of the said agreement the said Syndicate covenanted to assign the said agreement within two years from the date thereof.

8. That by an Order in Council dated the 20th day of January, 1903, the Lieutenant-Governor in Council, upon the recommendation of the Honourable the Premier, and by and with the advice of the Executive Council of Ontario, and in pursuance of the Act of the Legislature of Ontario, being 62 Victoria, Chapter 11, Section 36, was pleased to approve and did approve of the said agreement hereinbefore referred to and bearing date the 29th day of January, 1903.

9. That by an Indenture dated the 21st day of March, 1903, the said Syndicate so assigned, conveyed and transferred to your petitioner, the said agreement of the Commissioners of the Queen Victoria Niagara Falls Park, bearing date the 29th day of January, 1903, together with all the rights and franchises given and conferred thereby, and all the benefits and advantages to be derived therefrom.

10. That your petitioner acting in good faith, and in pursuance of the provisions of the said agreement, did in due course proceed with the erection of the plant and the installation of the machinery for the purpose of utilizing water-power for the production of electricity and did borrow from investors residing in the United Kingdom and elsewhere, the sum of upwards of \$10,000,000, for the purpose of building and equipping the said works for the carrying out of the corporate objects of your petitioner and your petitioner has faithfully paid the rentals reserved in the said agreement to the said Commissioners and has observed each and every stipulation therein contained.

11. That the Parliament of Canada did in the year 1907 pass an Act to regulate the exportation of electrical power and certain liquids and gases, the said Act being known as "The Electricity and Fluid Exportation Act" and being Chapter 16 of 6-7 Edward VII, 1907. Under the provisions of the said Act the regulations governing the exportation of power from this country were placed in the control of the Parliament of Canada and no person was thereafter allowed to export power or to construct or place in position any line of wire or other conductor for the exportation of power, without first having received a license from the Department of Inland Revenue.

12. That in pursuance of the provisions of the said Act, your petitioner duly applied and was on the 9th day of November, 1907, granted a license for leave to export electrical energy from Canada, the said license having been renewed to your petitioner from year to year, the same is now in force and your petitioner has continuously been and is now an exporter of electrical power as well under the provisions of

the said Electricity and Fluid Exportation Act, as pursuant to its power by charter of maintaining transmission lines to points outside of the Province of Ontario.

13. That by an Act of the Province of Ontario known as the Power Commission Act, being Chapter 19 of 7 Edward VII, 1907, the Legislature of the Province of Ontario empowered the Lieutenant-Governor in Council to appoint a commission of three persons to be a corporation under the name of "The Hydro-Electric Power Commission of Ontario," for the purpose of acquiring water privileges, water-power, works, machinery, plant, etc., for purchasing, transmitting and distributing electrical power or energy for sale to municipal corporations in Ontario and for the purpose of entering into contracts with municipalities for the supplying of electrical power and energy, which said Act has been amended from time to time and now appears as Chapter 39 of the Revised Statutes of Ontario, 1914, the said Hydro-Electric Power Commission having acquired water-powers, purchased electric energy and power and having distributed and are still distributing same to various municipalities in the Province of Ontario.

14. That by an Act of the Legislature of the Province of Ontario, being an Act respecting the Public Development of Water Power in the vicinity of Niagara Falls, and being known as "The Ontario Niagara Development Act," being Chapter 20 of 6 George V, assented to the 27th day of April, 1916, the said Legislature purports by the 3rd section thereof to give to the Lieutenant Governor in Council power to authorize the Hydro-Electric Power Commission to construct works for diverting the waters of the Niagara and Welland rivers for the purpose of generating electrical energy from the same and the said Act further provides in the 7th Section thereof as follows:—

"7. The exercise of the powers, which may be conferred by or under the authority of this Act or of any of them, shall not be deemed to be a making use of the waters of the Niagara river to generate electric or pneumatic power within the meaning of any stipulation or condition contained in any agreement entered into by the Commissioners for the Queen Victoria Niagara Falls Park."

15. That by an Act of the Legislature of the Province of Ontario known as the Ontario Niagara Development Act, 1917, the said Legislature by the third section thereof purports directly to authorize the Hydro-Electric Power Commission to exercise the powers which according to the third section of the Ontario Niagara Development Act might be exercised by the said Commission if so authorized by the Lieutenant Governor in Council.

16. That by an Act of the Legislature of the Province of Ontario known as "The Water Powers Regulation Act, 1916," being the Statute 6 George V, c. 21, assented to the 27th day of April, 1916, it is provided that the existing rights of owners of water power may be in part taken away and otherwise impaired, as may be more particularly ascertained by reference to the said Act and the amendments thereto contained in the Water Powers Regulation Act, 1917.

17. That your petitioner upon being advised to bring an action whereby the constitutional validity of the Ontario Niagara Development Act and The Water Powers Regulation Act, 1916, and the rights of your petitioner might be determined, applied on the 20th day of July last to the Attorney General of Ontario for a fiat permitting your petitioner to bring an action against the Hydro-Electric Power Commission for a declaration respecting the said Acts and the rights of your petitioner. The Attorney General of Ontario on the 9th day of August last declined to grant the fiat so requested. Your petitioner did thereupon cause to be issued in the Supreme Court of Ontario a writ against the said Attorney General as representing the Government of Ontario and the said Commission for the declaration as aforesaid, a motion having been made by the defendants, the said writ was set aside on the ground that the defendants could not be proceeded against in the manner attempted by your petitioner. The Order setting aside the writ was made the

subject of appeal, and an Order dismissing the appeal was pronounced by the Appellate Division of the Supreme Court of Ontario on the 12th day of January, 1917.

18. That true copies of the Ontario Niagara Development Act, The Water Powers Regulation Act, 1916, the Ontario Niagara Development Act, 1917, and The Water Powers Regulation Act, 1917, are submitted herewith.

19. Your petitioner humbly submits:

- (a) That the Ontario Niagara Development Acts and The Water Powers Regulation Acts aforesaid purport to authorize a breach of contract by the Crown, the effect of which will be to impair the financial credit of His Majesty's Governments of Ontario and Canada.
- (b) That the Acts are against the interests of the Dominion of Canada as a whole.
- (c) That the said Ontario Niagara Development Acts and The Water Powers Regulation Acts are contrary to the policy of the Canadian Constitution and they are *ultra vires* of the Legislature of the Province of Ontario for the following reason:—

The said Acts purport to affect your petitioner directly in respect of its undertaking, whereas your petitioner carries on an undertaking extending beyond the limits of the said Province of Ontario, within the meaning of clause 10 (a) of Section 92 of the British North America Act and is not subject to the Provincial Legislature, save as to laws which do not purport to interfere with or regulate the conduct of the said undertaking as such.

- (d) That the said Ontario Niagara Development Acts are contrary to the policy of the Canada Constitution and they are *ultra vires* of the Legislature of the Province of Ontario for the following reasons:

1. The International Boundary Water Treaty Act, being Chap. 23 of 1-2 George V, limits the amount of water which may be diverted from the Niagara river for power purposes. The said Treaty Act is binding upon the Legislature of the Province of Ontario, but notwithstanding, the said Niagara Development Acts purport to authorize a violation of the said Treaty Act.

2. The said Development Acts, in effect, purport to confiscate or destroy the property of your petitioner, namely, valuable contractual rights existing by paragraphs 16 and 20 of the agreement of the 29th January, 1903, and assigned to your petitioner.

3. The said Ontario Niagara Development Acts discriminate particularly against your petitioner and in effect purport to confiscate or destroy certain assets of your petitioner, namely, the valuable contractual rights aforesaid, by enactments directed especially against your petitioner, whereas your petitioner carries on an undertaking extending beyond the limits of the said Province of Ontario, within the meaning of clause 10 (a) of Section 92 of the British North America Act and is not subject to the provincial legislature, save as to such laws of general application as are valid under section 92 aforesaid.

4. The Ontario Niagara Development Acts purport to authorize works which will interfere with the public right to have navigation and fishing unimpeded by artificial works, which public right is subject only to the legislation of the Canadian Parliament.

- (e) That the said Water Powers Regulation Acts are contrary to the policy of the Canadian Constitution and they are *ultra vires* of the Legislature of the Province of Ontario for the following reason:

That the said Water Powers Regulation Acts purport to confiscate or destroy the property of your petitioner, namely, valuable contractual rights existing by paragraph (1) of the Agreement of the 29th of January, 1903, and assigned to your petitioner.

Your petitioner therefore humbly prays that the Governor General in Council will be pleased to direct that the said Ontario Niagara Development Acts and the said Water Powers Regulation Acts be disallowed, or, in the alternative, that the Governor General in Council will be pleased to direct that the question of the constitutional validity of the said Acts be referred to the Supreme Court of Canada.

And your petitioner will ever pray, etc.

MEMORANDUM Concerning Recent Provincial Legislation and Executive Action in Canada with Special Reference to the Niagara Question in the Ontario Legislature.

The British North America Act (sec. 92, sub-sec. 13) confers upon a Provincial legislature power to make any law in relation to "property and civil rights in the Province." There does not appear on the face of the clause any specific limitation of the powers of Provincial legislatures in respect to encroachment upon civil rights, and, were this clause taken by itself, it would appear to be within the competence of a Provincial legislature to make laws which involved palpable injustice. The Constitution of the United States (Act 1, sec. 10) limits the powers of State legislatures in several directions and particularly as follows: "No State shall . . . pass any . . . *ex post facto* Law or Law impairing the obligation of contracts." When the strength of the influence of the individual States during the formative period of the Union and the tenacity with which they clung to "State rights," as against the authority of the Federal legislature, are considered, this provision is very remarkable.

There is no similarly specific provision in the British North America Act, but the absence of such a provision cannot legitimately be regarded as affording legal sanction to the commission by Provincial legislatures or executive Governments of Acts which are palpably unjust.

"It is a sound and well-recognized maxim of construction that in the interpretation of statutes we are to assume nothing calculated to impair private rights of ownership unless compelled to do so by express words or necessary implication. . . . We are not to assume without express words or unavoidable implication, that it was the intention of the Imperial legislature to confer upon Parliament the power to encroach upon private and local rights of property."

Strong, J., judgment in *Queen v. Robertson*, 6 S.C.R., p. 134; 2 Cart., p. 107 (1882); Lefroy "Leg. Pow. in Canada," Toronto, 1917-18, p. 24.

In placing "property and civil rights" within the jurisdiction of the Provincial legislatures, the British North America Act evidently did so to the end that these might be protected. It cannot seriously be maintained that the Provincial legislatures were expressly endowed with power to plunder the citizens of the Province within their jurisdiction, to repudiate contracts entered into by their predecessors or by themselves, to confiscate property belonging to British investors, and to close the Courts against the aggrieved parties. Thus, although no explicit provision for safeguarding the interests of those with whom the Provincial legislatures and Governments enter into contractual relations may be found in the British North America Act, machinery is, nevertheless, provided by means of which the limits of legislative and executive authority may be determined, and, in case of these limits being exceeded, remedy afforded. This machinery exists, in the first instance, in the Law Courts, before which complaints of undue exercise of power may be brought; in the second instance, in the power of Disallowance, with which the Dominion Parliament is endowed; and, in the third instance, in the power of Imperial Parliament to amend or repeal the British North America Act or, alternatively, to pass any law relating to the Dominion or the Provinces.

There can be no doubt about the general intention of the framers of the British North America Act, because these intentions were in strict accordance with the general attitude of Imperial Parliament and of Imperial Administration. Under these intentions and in consequence of the attitude of which they were the outcome, the Dominion and the Provinces were endowed with very large powers on the presumption that these powers would not be abused. The authorities created by the British North America Act were, however, not endowed and could not be endowed with "absolute power." Large as the powers of Imperial Parliament are, they are not "absolute." Parliament cannot delegate an unlimited authority, because, although its own powers are indefinite, they are, nevertheless, subject to constitutional limitations. This matter is left in no doubt, because under section 18 of the British North America Act the "privileges, immunities and powers to be held by the Senate and House of Commons" (of Canada) ". . . shall never exceed those at the passing of this Act held . . . by the Commons House of Parliament of the United Kingdom."

All expressions, therefore, such as "sovereign powers," "almost absolute powers," etc., which have, in the course of recent discussions, been loosely applied to the powers of the Provincial legislatures are wholly inapplicable to them, as indeed they are inapplicable to the British House of Commons. They are much less applicable in the cases in question, because, since these legislatures owe their existence to an Act of the Imperial Parliament, and since their existence may be determined by it, they are, therefore, subordinate to Imperial Parliament. Apart from that circumstance, however, their proceedings are bound by certain rules and their Acts are subject to revision—Dominion Acts to the revision of Imperial Parliament, and the Provincial Acts to revision by the Dominion Parliament.

While the Provincial legislation is directly subject to revision by the Dominion authorities, the machinery of the British North America Act does not explicitly provide for revision or disallowance of Provincial legislation by Imperial authorities. That the effective right to revise or disallow the legislation of a Province inheres in Imperial Parliament, there can, however, be no manner of doubt, since Imperial Parliament might, if it so decided, pass an Act which would render null and void any Provincial Act. Thus the Secretary of State for the Colonies objected (in 1909) to a clause in an Ontario Act restricting the right of appeal to the Privy Council. (Report of Committee of Privy Council, April 27th, 1909; see also Lefroy, A.H.L., "Canada's Federal System," Toronto, 1913, p. 33.) The Colonial Secretary also intervened in a case in 1911, whereupon the Minister of Justice recommended Disallowance, and the Act in question was disallowed. (Lefroy, *ibid.*)

Under the system which prevails in the British Empire from the centre to the Dominions, the exercise of power by the Executive Government is subject to defence in the Courts of Law. If any one is aggrieved at the exercise of that power, he may appeal to the Law Courts, and the Government can there defend its action. It is not necessary to submit proof of this from legal history. The proof is to be found in all authorities upon the law and practice of the Constitution.

A further principle has been well established, viz., that while within certain limits an executive Government may delegate its authority by Commission or otherwise, it cannot transfer to a person or body an immunity from prosecution which is not explicitly possessed by itself.

While the King cannot be personally sued in his own Courts, there does not seem to be any legal justification for the idea that any one who represents the King can be endowed with similar immunity. Indeed, it is clear that if this principle were admitted, there could be no such thing as *responsible government*. The meaning of *responsible government* in the sense in which these words apply to the British system, is that the Minister is responsible to the people, although his master the King is not.

"Some person is legally responsible for every act done by the Crown." This responsibility seems inevitably to be not merely to a legislative Chamber to which the Minister might (or might not) belong, but primarily to the people through the Courts

of Law, for by a Court alone could it be determined what the act was and by whom it was done.

Argument is scarcely necessary to shew that the endowment of a Minister or other executive officer with immunity from appearance in a Court of Law in respect of any matter pertaining to his office is in entire discord with English law and with Constitutional practice throughout the British Empire.

It is obvious that this system has resulted from the development of British institutions. These institutions have acquired their present character through the interaction of constitutional checks by means of which the liberties of the people have been secured against the arbitrary exercise of governmental authority. If any governmental organ, whether superior or subordinate, exercises authority, it is under the principle and practice of the Constitution bound to shew that the authority is exercised by rule of law.

There thus underlies all discussions upon the powers of legislatures and upon the conflict of laws the assumption that the Courts of Law are open and that it is the duty of the Courts to determine such questions.

The history of the relations between the Dominion and the Provinces in this regard need not be detailed here further than to draw attention to the following points:—

In all the published correspondence and discussions upon the question of Provincial legislation from the time of Confederation onwards it is either explicitly stated or it is implicitly assumed that the Courts of Law are open to those who feel themselves aggrieved by such legislation. For example, when Sir John Young, Governor-General of Canada, suggested in a despatch dated 11th March, 1869 (Hodgins, W. E., "Correspondence . . . upon . . . Dominion and Provincial Legislation," Ottawa, 1896, p. 63), that a special tribunal should be instituted in Canada with jurisdiction over the subject of Provincial legislation, Lord Granville, then Colonial Secretary, replying to this suggestion, wrote:—

"I see no reason for the establishment of such a tribunal. Any question of this kind could be entertained and decided by the local Courts, subject to any appeal to the Judicial Committee of the Privy Council."

So also Sir Charles Fitzpatrick, while refusing to recommend the disallowance of An Act to Amend the Municipal Drainage Act (1 Edw. VII., ch. 30) reported:—

"The undersigned considers that it is competent to a legislature to declare what the effect shall be of statutory proceedings authorized by the legislature. These sections (those objected to) appear to do no more. They cannot certainly affect any proceedings or appeal competently authorized by Parliament, and if the Supreme Court gives an appeal from the decisions in question, that right of appeal is not taken away by these provisions." (Hodgins, W. E., *opicit*, p. 4.)

(See *ante* p. 52.)

The Judicial Committee of the Privy Council puts the case more strongly in the following judgment:—

"It is the duty of the Court, however difficult it may be, to ascertain in what degree and to what extent authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist, and in order to prevent such a result the two sections (B.N.A. Acts 91 and 92) must be read together, and the language of one interpreted and where necessary modified by that of the other."

(Judgment of Privy Council in *Citizens Insurance Co. v. Parsons*, 7 App. Cases, p. 108.)

Even in the arguments against disallowance of Provincial Acts advanced on behalf of the Provinces, the same assumption is manifest.

For example, in 1905, when the disallowance of a British Columbia Act was urged, the Attorney-General of British Columbia argued that "the effect of disallowance is to make the Minister of Justice the highest judicial dignitary in the land for the determination of constitutional questions, and in reality above the Supreme Court of Canada. The decisions of the Supreme Court of Canada are open to question in the Judicial Committee of the Privy Council. From the decisions of the Minister of Justice there is no appeal. He stands alone." (Lefroy, "Canada's Federal System," p. 41.)

Up till the year 1896 the principle that a Provincial Act which involved injustice might be disallowed on the ground that the perpetration of injustice is contrary to public policy was generally accepted.

(Cf. Sir Allan Aylesworth, quoted by Lefroy, "Canada's Federal System," p. 35.)

Since that date there is manifest a change of view on the part of various Ministers of Justice.

For example, in a case cited above, Sir Charles Fitzpatrick reported:—

"The undersigned conceives that your Excellency's Government is not concerned with the policy of this measure. It is, no doubt, *intra vires* of the legislature, and, if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the legislature, and the acts of the legislature may ultimately be judged by the people."

Hodgins, W. E., "Correspondence, etc.," 1905, p. 4 (*ante* p. 52).

This view was also held by the late Mr. David Mills (Minister of Justice, 1897-1902) and was further developed by Sir Charles Fitzpatrick in 1902, to the effect that "each Provincial legislature within the sphere of its authority and jurisdiction should be supreme and amenable only to its constitutional judges, the electors of its own Province." (Lefroy, "Canada's Federal System," p. 35.)

The view was endorsed in 1909 by Sir Allen Aylesworth when Minister of Justice.

With respect, this view must be regarded as failing to touch the marrow of the question, even if it were indisputable on constitutional grounds. To throw the responsibility for legislation by a legislature and for administrative acts by an executive Government back upon the people is to evade responsibility altogether, and to contribute to the destruction of Parliamentary government. The remedy for injustice in an organized society is not an appeal to the people, but an appeal to a Court of Law.

It is only necessary to look at the question in a practical way to realize the absurdity of the suggestion that there is no legal remedy, but only a political remedy, for administrative error or injustice. If, for example, an individual creditor of the Province, who is either resident or non-resident, finds himself aggrieved by a legislative Act, must he engage in political propaganda and endeavour to unseat the Government or submit tamely to what he conceives to be unjust treatment? An opinion of that kind is an incitement to all persons who come into relations in any way with the Government to engage in political action, with the result, if it were applied, that the political field, instead of being reserved for questions of public moment, would be degraded into an arena for the settlement of private quarrels between the Government and the persons whose contracts the Government had violated.

At the present moment, when so large a proportion of the mature manhood of the country is fighting its battles, it is impossible for any effective appeal to the electorate to be made.

Moreover, if the electorate is to be looked upon as the final tribunal for the trial of causes against the executive Government, it would be necessary to provide

machinery for appeal to that tribunal by aggrieved parties. But there exists no such machinery, and the provision of it might be consistently and continuously refused by the legislature.

It is submitted that under the doctrine so developed, the Provincial legislatures might close all the Law Courts, deprive every citizen of his civil rights, confiscate all personal and real property, send all critics to jail or banish them from the Province, or perform any other tyrannical act, without hindrance so long as the legislatures were returned by the constituencies. They might repeal all the statutes against bribery at elections, and, by "stuffing" ballot boxes and other means, not unknown in the political history of Ontario, continue in power indefinitely, exercising "almost sovereign powers."

Even if the Provincial legislatures were to be regarded as supreme within their own sphere, it would still be necessary to determine the limits of that sphere. Have the electors of the Province been endowed with the power of determining the limits of their own powers, irrespective of the corresponding powers of the people of other Provinces of the Dominion, not to speak of the powers of other peoples within the Empire? It is clear that they have not, otherwise there could be no national or Imperial cohesion.

The doctrine that Provincial legislatures have the power to pass legislation, even if it is of a demonstrably unjust and confiscatory character, seems to have been re-enforced by a misinterpretation of a judgment of the Judicial Committee of the Privy Council in the case of the Attorney-General of Canada v. the Attorney-General of Ontario, Quebec and Nova Scotia, 1898. (Appeal Cases 713.) The passage in the judgment upon which the doctrine in question is based is as follows:—

"The suggestion that the power" (of legislation) "might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is in an appeal to those by whom the legislature is elected."

Before this pronouncement was made, there were (between 1867 and 1898), according to Mr. Lafleur, five cases in which Acts were disallowed on the ground of injustice (*cf.* Lefroy, A. H. F., "Canada's Federal System," Toronto, 1913 p. 46), while in some other cases the recommendations made by Ministers of Justice led to a change in the law, either by appeal or amendment, and, consequently, the necessity for disallowance was obviated." There was also one case subsequent to this pronouncement in which disallowance was recommended on the ground of injustice. (Yukon Ordinance (1898). (*Ibid.*)

Mr. Lafleur pointed out (*ibid*) in the case upon which the above pronouncement of the Judicial Committee of the Privy Council was made, the Provincial statutes in question had not only been passed by the Provincial legislature, but, through the lapse of the period during which disallowance might be effected, had become binding laws. That is to say, that the pronouncement of the Privy Council applied to the whole process of legislation, viz., the passing of the Acts in question by the Provincial legislature, the examination of the Acts by the Minister of Justice of the Dominion, and the consequent endorsement of the Acts by the Dominion Executive, the latter part of the process being devised for the express purpose of preventing the abuse of legislative authority by a subordinate legislative body.

It is, therefore, submitted that even if the doctrine were accepted that Dominion legislative authority is supreme, there is no justification for regarding Provincial legislation which is subject to revision by Dominion authority as binding until it is so revised.

In this connection the statement of Mr. Newcombe, Deputy Minister of Justice, sitting with the Privy Council of Canada (in the *Alberta Case*, 1910), may be quoted: "The interpretation of the Judicial Committee of the Imperial Privy Council that we have a carefully balanced constitution, under which no one of the Provinces can pass laws for itself, except under the control of the whole exercised by the Governor General, means that His Excellency is advised here locally under our system by the representatives of all the Provinces, and, therefore, there is reason for interfering locally which could not be urged in the case of Colonial legislation dealt with at the Court in London." (*Cf.* Lefroy, "Canada's Federal System," p. 48.)

It is to be observed also that in the case of the Acts of the Ontario legislature to which exception is taken—one of the constitutional checks, viz.—appeal to the Courts of Law is removed, and, therefore, the legislation in question does not come within the category of valid legislation indicated in the judgment of the Privy Council quoted above.

The judgment of the Privy Council assumes that power will not be abused; but it is precisely the abuse of power about which complaint is made—abuse of power great enough to involve the removal of one of those constitutional checks, the assumption of which underlies the judgment.

It would not be in accordance either with the spirit or the letter of the law of England to submit to an electorate the interpretation of an Act of Parliament, nor the terms of a contract between the Executive Government and a private person. Clearly, therefore, the remedy proposed is wholly inapplicable in such cases. If it is the only remedy, it can be so only in the sense that all the checks upon illegal or unjust action which have been provided for by the constitution have been proved to be ineffective. In that case the only remedy is to promote legislation by means of which other and more effective checks may be provided. No other meaning can be attached to the judgment of the Privy Council. It cannot be seriously suggested that every aggrieved person should demand a general election in order to bring to account a Government which he regarded as having wronged him. Since he could have no power to force such an election, the remedy for him would be non-existent.

If a subordinate legislature attempts to remove a constitutional check in order the more easily and effectively to perpetrate injustice, it is surely the constitutional duty of the superior authority to prevent the removal of such a check, and to declare as unconstitutional any legislation having that end in view.

There seems to be a general agreement among the authorities that, since about 1896, there has been a manifest reluctance to disallow Provincial legislation. The reason for that is not far to seek. The most important conflicts of jurisdiction had already taken place between the Province of Ontario and the Dominion. Owing to the fact that for many years the legislation of Ontario and the attitude of the Provincial Government towards questions of Provincial authority were determined by one of the most acute constitutional lawyers of his day, Sir Oliver Mowat, the cases brought by him in the interests of the Province of Ontario were invariably decided in favour of the Province, and this was the natural consequence of the fact that on all controverted questions of Provincial authority he took the utmost care to make exhaustive investigation before action was taken.

It seemed unlikely that any abuse of Provincial authority would occur nor would such abuse have occurred had the legal guidance of the Province remained in so competent hands as those of Sir Oliver Mowat.

Sir Oliver Mowat became Minister of Justice in 1896, and, although he retained office for only one year, his attitude towards the question of Provincial autonomy not only determined his view of the question during his period of office, but remained as a tradition of the Department of Justice. This attitude was founded upon what was assumed to be the characteristic of the conduct of Provincial Executive Governments, viz., serious consideration by competent experts of the legislation which was

introduced and strict avoidance of the abuse of power. So long as these conditions existed, no harm could result from admission of the "right" of a Provincial legislature to legislate as it pleased; but when these conditions ceased to exist, as they did, in nearly every Province of Canada, the time had already arrived when the Dominion Parliament should exercise its authority in order to secure the public interest of the Dominion against Provincial encroachment or misgovernment.

The effect of the unfortunate relaxation of control over Provincial legislation which appears to have crept in about 1896 is apparent in the scandalous episodes which have disgraced the Provincial executives of Manitoba, Saskatchewan, Alberta and British Columbia. Irrespective of party, the executive Governments of all of these Provinces have shewn how seriously they may abuse the power with which they have been entrusted by the people and endowed by statute.

The time seems to have arrived when the question of the abuse of powers by the Provincial executives and Provincial legislatures ought seriously to be considered.

The claim to absolute power on the part of a Provincial legislature has been put with greater vigour than soundness by the late Mr. J. J. Foy, Attorney-General of Ontario in 1909:—

"For upwards of 200 years the Lords and Commons of Great Britain have legislated without fear of the Royal veto, although its existence has been undoubted; and, therefore, in full accord with the spirit and genius of British institutions, the people of the Province, being entitled to all the rights of British subjects elsewhere, and as free . . . to legislate within their jurisdiction as the Lords and Commons of Great Britain are free to legislate, cannot submit to any check upon the right of the legislature to legislate with respect to subjects within its well-defined jurisdiction, although a technical right to disallow may exist."

(Lefroy, "Canada's Federal System," p. 39.)

This view of the "rights of a Provincial legislature" cannot be accepted. Even the Dominion Parliament possesses under Sec. 18 of the British North America Act no powers in excess of those of the House of Commons of the United Kingdom in 1867; and that House did not possess at that time, and the Parliament Act notwithstanding does not possess now, unchecked powers of legislation. A subordinate legislature, especially one being but a single Chamber, could by no means be permitted to dispense with any constitutional check. The liberty of the people of the Province would otherwise not be worth an hour's purchase.

In several of the cases in which disallowance of Provincial legislation was asked for and refused, various Ministers of Justice reported adversely upon the justice of the legislation, although they entertained the view that unjust legislation should not be disallowed unless the injustice of it affected the interests of the Dominion as a whole. This view was put forcibly by Mr. Doherty in his report upon the Alberta Act of 1910 relating to the funds derived from the sale of bonds of the Alberta and Great Waterways Railway Company. He says:—

"There was considerable discussion at the hearing as to the practice and precedents in respect of disallowance of legislation by reason of unjust provisions, or because of its interference with vested rights or the obligation of contract, and a recent report of the predecessor in office of the undersigned was quoted as shewing that the Governor-General should in no case be advised to disallow for such reasons. It is true, as has been frequently pointed out, that it is very difficult for the Government of the Dominion, acting through the Governor-General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights affected, and this is manifested not only by expressions in reports of Ministers, but also by the fact that but

a single instance is cited in which the Governor-General has exercised the power upon these grounds alone. The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operations of local statutes *intra vires* of the legislatures. Doubtless, however, the burden of establishing a case for the execution of the power lies upon those who allege it."

On this point it may be remarked that serious injury might have been inflicted upon the credit of the Dominion by an unjust Act of a Provincial legislature and yet positive evidence of such injury might be quite impossible to procure. Injury of this character is invariably negative. Some people refuse to invest in the bonds of a Province whose legislature passes unjust laws or whose Executive Government commits unjust acts, and under certain circumstances the refusal of these people to invest might involve the closing of some money markets against the Province and even against the Dominion, but the difficulty of eliminating all the elements in the determination of the rate of interest other than the abstention of the investors in question would be almost insuperable in practice. Hence definite proof is probably wholly impossible to obtain in any case. Nevertheless the equilibrium of credit may have been seriously disturbed and on account of the abstention in question the rate of interest for public and private borrowers alike might have been increased. An example may be given from the financial history of the United States. In or about the year 1885 a small municipality in the State of New Jersey defaulted in the payment of interest upon its bonds. This circumstance drew the attention of trustees and other holders of municipal bonds to the risk incurred in such investment. The consequence was the sale of large amounts of municipal bonds, not only in the State of New Jersey, but elsewhere in the United States, and the investment of the funds in European securities. These operations were effected quietly and many of them were conducted imitatively, those who conducted them being in frequent cases unaware of the reasons for the failure of confidence in municipal securities. Thus, although there seemed to be no doubt whatever of the fact, it might have been difficult to find more than one or two persons who actually acted directly upon the fact that the municipality in question had defaulted. In such a case legal proof might be very difficult to establish. So also in the case of the numerous prior liens created by various Acts of the legislature of Saskatchewan. Certain loan companies promptly advanced the rate of interest upon loans effected in that Province, while others refused to lend there on any terms. Even in such a case it would have been difficult to establish proof that injury had been committed upon the Province and upon the Dominion by the legislation in question. Other causes for the increase in the rate of interest might easily be alleged. Moreover, the credit of the Dominion stands high and the effect of an individual legislative Act of one Province upon that credit might be regarded in general as negligible.

It is necessary in the first instance to approach the problem in a more abstract manner. The principle that legislation or action of any kind which throws obstacles in the way of recovery of a debt contracted for goods supplied on credit involves an increase of the price of such goods, other things being equal, is well established. So also legislation which renders it more expensive to secure payment of interest upon a loan, must, other things being equal, increase the gross rate of interest or the rate of pure interest plus the premium of insurance against difficulty in procuring payment and against risk of loss of the principal. It may be regarded as susceptible of proof therefore in an abstract sense, that such legislation as that of the Province of Saskatchewan must be injurious not only to the Province but to the Dominion, because it conduces to the advance in the rate of gross interest, other things being equal. It is not necessary to prove that A. B. increased the rate demanded for a particular loan on the exclusive ground of the legislation.

So also in the Alberta case, according to the Minister of Justice, proof of injury to the credit of the Dominion was wanting, yet it might be submitted that the proof lay on the face of the Act. If the injustice of the Act is admitted, the injury to the Dominion, however proportionately infinitesimal it might be, is apparent.

Thus while it is true that it may not be possible incontrovertibly to demonstrate that a single Act of a legislature which perpetrates an injustice to an individual inflicts an injury upon the credit of the Dominion, it nevertheless does so, *because* it is an unjust Act, however inappreciably the credit of the Dominion has suffered, and however difficult it may be to prove any specific damage.

It is clear that if a succession of unjust measures is passed by the Provincial legislatures or unjust Acts are perpetrated by the Provincial executives, the effect of these Acts is cumulative and that the total effect *must be* serious injury to the credit of the Dominion. The time for the Dominion authorities to impose a check is when these acts begin to be committed, not when the accumulation of grievances resulting from these acts renders drastic measures absolutely necessary, or when the damage is irreparable by any measures that can be taken.

The plea which underlies the decisions of various Ministers of Justice that the Dominion Parliament is not concerned with political ethics and that the Provincial legislatures may pass any measure, no matter how unjust, so long as it does not infringe upon a privilege of the Dominion, seems to the writer, for the reason stated above, quite inadmissible.

A sounder view is that unjust Acts injure not merely the individuals who are prejudiced by them, but through the introduction of injustice into legislation, unjust Acts diminish the authority of all legislation and an accumulation of them brings legislation and legislatures alike into contempt. Not only, therefore, do unjust Acts perpetrated by a Province bring the legislation of that Province into contempt, but they bring the legislation of the Dominion into contempt also. Moreover, not only do unjust Acts reflect unfavourably upon the Executive Government by which they are introduced, but as well upon the superior executive which fails to exercise the disciplinary power with which it has been endowed by the Constitution.

Still more important, in these critical moments democracy is on trial. If every Province in our democratic Empire develops "particularist" views, such as have been expressed in some of the quotations given above, the Empire must fall to pieces; and if every democratic nation insists upon the "right to misgovern itself" democracy must fall to pieces.

The particular instance of the abuse of Provincial authority which has occasioned this Memorandum is legislation concerning the exploitation of water power in Ontario and principally at Niagara Falls.

This legislation has, during the past few years, created an administrative body known as the Hydro-Electric Commission, and has endowed this Commission with powers which it has not scrupled to exercise in an arbitrary manner, while the legislation has also prevented an appeal to the Courts of Law in respect of the acts of the Commission. The legislation has, moreover, explicitly abrogated contracts entered into by the Government of Ontario with private parties. Even if the acts and the projects of the Commission were on a small scale, the injury to the public interest and the injustice to private persons would be objectionable; but both are on a scale of such magnitude that they seem to be hastening towards financial disaster for the Province and financial embarrassment for the Dominion.

There can be no doubt that ere long the Dominion Parliament will be invited to make large contributions either by way of loan or by guarantee in order that the Province of Ontario may be relieved from the intolerable burden which must be imposed upon it if the fantastic schemes of the Hydro-Electric Commission are carried out.

Already these schemes involve an expenditure of not less than \$200,000,000. It is true that the expenditure of this large sum cannot take effect immediately, but in

this session of the local legislature, appropriations of upwards of \$7,000,000 have been made on account of the Hydro-Electric Commission. Those who are most active in the propaganda for the Commission have evidently no thought of or interest in the prosecution of the war, excepting in so far as the preoccupation of the minds of the people enables the Commission to engage in undertakings at which in any other circumstances the people would look more critically.

In the closing hours of the session of 1916 and again even in the last minutes of the last hour of the session of 1917, Hydro-Electric legislation was introduced and passed in the Ontario legislature without discussion.

This expedition could only be justified on the ground that the measures in question were measures of emergency. There can be no excuse of this kind. It is obvious that each year the Hydro-Electric legislation is kept back so that discussion is impossible. The consequence of this absence of discussion is a continuous series year after year of amending Acts. The legislation is evidently of deliberate intention drafted in haste so that the purport of it may not become known; but this haste prevents adequate consideration of the measures even by the promoters of them. Amending measures upon amending measures are therefore necessary until the numerous Acts form a mass of ill-digested and incoherent legislation.

It must be realized that the Acts in question added greatly to the powers of the Government over the property of private persons and that the intention of the Government, as has been made abundantly clear, is that this legislation is final, no legal appeal of any kind being tolerated, either to the Courts of Law or to the Dominion authorities—while an appeal to the people is effectually prevented by the suppression of criticism in every way open to the Government.

The process of legislating in this manner could not continue year after year without collusion between the Government and the Opposition, or alternatively without the control of both by the Hydro-Electric Commission. The latter is clearly the case. It has become widely understood that no candidate for a seat on either side of the House has any chance whatever of being elected until he arrives at an agreement with the Chairman of the Hydro-Electric Commission. The control of the Chairman of the Hydro-Electric Commission has apparently also been great enough to secure the suppression of a report upon the finances of the Commission prepared at the instance of the Government by Messrs. Clarkson & Cross, Chartered Accountants.

Individual instances of the exercise of arbitrary power may appear to be condoned by the public during a transitory phase of public feeling; but the habit of exercising power in an arbitrary manner is easily formed and difficult to break. It may readily outlast a public movement, and may be counted upon, sooner or later, to bring the Government which acquires the habit into conflict with the people. Meanwhile, however, the country suffers alike in its internal and external relations. It is a very usual dialectical trick of the politician who sets all law at defiance to denounce his critics as enemies of the public welfare, and, since his strident voice reaches many people, criticism is discouraged and sometimes even suppressed.

While the Ontario legislation is objectionable on legal, constitutional and ethical grounds, it is also objectionable on economic grounds. None of the experiments in public ownership by the Province can be regarded as successful in an economic sense. All of these experiments have involved the Province in heavy obligations, and none of them has produced an adequate return. There is, no doubt, much popular enthusiasm for what is called public ownership; but such enthusiasm is with difficulty sustained by means of rhetorical speeches and extravagant promises in face of balance-sheets which show constantly recurring deficits. It is true that the people, who have encouraged these enterprises by voting for the politicians who have promoted them, have themselves to blame if they find the failures reflected in their tax bills; but the people do not usually blame themselves, in general, they look for some political scapegoat and execute vengeance upon him. In Manitoba, for example, disaffection on account of the Government management of the telephones is said by

the politicians of the Province to have had much to do with the defeat there of the Conservative Government, and yet the Government had assumed that the people approved of their telephone policy.

The history of "Public Ownership" in Great Britain is highly instructive, because, on a scale of great magnitude and under conditions highly favourable in respect to efficiency and integrity of officials, the policy has, on the whole, not been successful in an economical sense. The Government telegraphs have exhibited from the beginning enormous deficits, because of the fixation of a telegraph rate on political grounds at a point not at, but below, cost, even when the Government system was inaugurated. The deficiency has grown with the increase of cost. The Government telephone service was instituted, not because the service rendered by the former company was unsatisfactory, but because the telephone service was interfering with the Government telegraph monopoly. Thus, in order to endeavour to prevent the further development of the telegraph deficit, it was necessary for the Government to acquire the telephone. The monopoly of telegraph and telephone notwithstanding, the Government has not been able to provide a satisfactory service or to give a low rate, while the losses in these branches of the Post Office service continue to absorb an increasing proportion of the Post Office revenue.

The control of the railways during war time is an emergency measure. While strong pressure may come from the shareholders of the railways to retain the Government guarantee of their dividends, even at the sacrifice of some independence, there is no reason to believe that any British Government would seek to add to the total mass of the British debt by the amount which would be necessary to nationalize the railways.

As regards municipal industrial undertakings in Great Britain, the period of furore for these has long passed. The great increase of municipal indebtedness and the difficulty of procuring from British investors the necessary funds for extensions led, in or about 1906, to a practical cessation of development. The municipal enterprises which up till that time had been established have had varying fortunes; many of them have encountered financial and political difficulties. After initial losses, some of them may be said to have passed into a stable condition, but even in such cases the actual pecuniary result has been in general disappointing to the enthusiastic advocates of the schemes when they were initiated. The lesson which the experiments on public ownership in Great Britain undoubtedly convey is that great caution should be exercised in regard to such projects and every encouragement given to private enterprise under public control, rather than to public monopoly. Any service is more likely to be efficiently and cheaply rendered under the first system than under the second.

Some public speakers and writers have of late been expressing the opinions that "public ownership is inevitable," "that it is an incident of progress," and that, after the war, the policy will be very generally adopted. In the opinion of the writer, there is no justification for any of these views. To regard "public ownership" as inevitable is mere fatalism. This view arises from inadequate knowledge of the history of the subject. The same remark applies to the view that it is an incident of progress. It is rather an incident of reaction. The history of the subject shows that democracy and "public ownership" are incompatible. The policy has sometimes thriven in autocratic countries, but never in countries where individual liberty is valued. The reason is that "public ownership" involves and requires the use of autocratic methods. A ready illustration is to be found in the arbitrary and autocratic conduct of the Hydro-Electric Commission of Ontario. The third view, that the conditions after the conclusion of peace will make for "public ownership," seems to the writer to be wholly fallacious. The mass of public burdens upon all the belligerent countries and upon some neutrals after the war will be so great that there must be extreme reluctance to increase them. After the war, there is more likely to occur, as after all wars in modern history, a considerable migration of peoples.

These peoples will naturally migrate to that country which, in their opinion, offers the highest wages and the most unrestricted opportunity for the employment of their labour and capital. Apart from the movements of population, the movements of capital must be similarly determined. The administration of industry by a political organ must necessarily restrict such opportunities and must, therefore, repel immigration. It is clear that these countries will recover most quickly from the war in which production is most active; and production must be most active where the rewards of it, in the wages of labour and the profits of capital, are highest and most certain. The competition of different countries, after the war, will be undoubtedly keener than before, and those countries which permit themselves to be guided by visionaries into discouraging private enterprise must find themselves heavily handicapped in the industrial struggle. In such countries the farmer may be prosperous in so far as he restricts himself to the consumption of his own produce, but industry must decline and population must be stagnant.

The general conclusions which may fairly be drawn from a survey of this complicated subject may be put in the following terms:—

(a) While the control and inspection of industrial undertakings may properly be entrusted to a public authority responsible to the people, such functions cannot with safety to the public interest be entrusted to irresponsible commissions.

(b) It is still more disadvantageous to the public interest to endow irresponsible commissions with powers to expropriate private property and to conduct industrial enterprises.

(c) Under the name of "public ownership," small groups of persons have been endowed by Provincial legislatures and in particular by the legislature of Ontario with powers of an exclusive and monopolistic character, without adequate constitutional checks upon their proceedings.

(d) Such commissions have been rendered exempt from control by the legislature and at the same time have been rendered immune from proceedings in the Law Courts.

(e) Experience has shown that such commissions habitually use their powers to the fullest extent and have on frequent occasions acted in a manner defiant of the laws respecting civil rights.

(f) The Ontario Acts have placed many municipalities of Ontario wholly at the mercy of the Commission in question, and have by so doing seriously infringed upon municipal autonomy.

(g) These Acts have also removed, in the interests of the commissions, the financial safeguards which had been devised for the purpose of preventing public bodies from assuming responsibilities which they might have difficulty in sustaining.

(h) Experience has shown that, deprived as the Governments and legislatures are of effective checks upon the commissions, these bodies have involved the Provinces in financial obligations for which there was no Parliamentary warrant.

(i) The schemes in which the Hydro-Electric Commission of Ontario has embarked have not in any case received the approval of competent technical persons. No adequate estimates have been formulated and extensive engineering works have been embarked upon directly by the Commission without contract. These proceedings have involved the Province in a series of hazardous enterprises which seem certain at no distant date to involve the Provincial treasury and the municipal bodies alike in serious financial embarrassment.

(j) By means of fantastic promises as to rates for electrical power, the Hydro-Electric Commission has stimulated demand for electrical power to an extent which has overwhelmed it. This demand depends upon a price which is unremunerative and is not susceptible of being sustained. If the Hydro-Electric Commission attempts to redeem its promises, it must continuously increase its expenditure upon capital account, at the same time charging that account with its accumulating deficits, with

the result that, when the inevitable crash comes, the consequences to the credit of the country may be very serious. Prudence would suggest preventive measures.

(k) The embarkation of the Province of Ontario in extensive engineering schemes, even if these were properly estimated and adequately investigated, is clearly inexpedient at the present critical time, when the resources of the Province are already heavily engaged, and may ere long be still more heavily engaged in providing the means necessary for the conduct of the war and afterwards for the liquidation of its cost.

(l) The schemes of the Ontario Hydro-Electric Commission cannot possibly be carried out without revision of the Treaty between Great Britain and the United States respecting the International Waterways.

(m) The projects of the Hydro-Electric Commission, according to the public statements of the Chairman (Sir Adam Beck), include the electrification of *all* of the railways in Ontario. Since the railway system of Ontario is not independent but is necessarily connected with the general system of the country, the interests of the Dominion may or may not be served by the electrification of the lines of a single Province.

(n) The projects of the Hydro-Electric Commission include also the erection of pulp mills and other industrial undertakings of a more or less speculative character.

The following practical suggestions may be added:—

1. That the Attorney-General of Ontario should be strongly urged on grounds of public policy to grant a fiat or fiats in order that the legal questions connected with the development of power at Niagara may be thoroughly settled in the Courts.

2. That the Prime Minister of Ontario be strongly urged, on grounds of public policy, to disclose without delay the terms of the report upon the Hydro-Electric affairs by Mr. Clarkson, C.A.

3. That at the present time no unnecessary public works should be undertaken.

4. That at the present crisis in international affairs, no steps be taken which might involve Great Britain and the United States in renewed controversies over boundary waters.

5. That the legislation respecting the Hydro-Electric Commission in the years 1916 and 1917 be disallowed as contrary to public policy.

While the earlier legislation cannot now be impugned, the series of Acts passed last year (1916) and the similar series passed this year (1917) fall within the limit of time provided by statute, and, therefore, they may be dealt with. The history of the Hydro-Electric Commission has shown that the presumption that the extensive powers with which the Government and the Legislature have been endowed would not be abused is unfounded, and the presumption now is that they will continue to be abused until a check is imposed.

NOTE

The clauses in the Ontario legislation relating to Niagara Power which seem to be specially objectionable are contained in the following statement:—

1. 6 Edw. VII, Chap. 15, Sec. 21. "No action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office without the consent of the Attorney-General for Ontario."

2. 7 Edw. VII, Chap. 19, Sec. 23. "Without the consent of the Attorney-General, no action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office. 6 Edw. VII, c. 15, s. 21."

3. Acts validating contracts between the Hydro-Electric Commission and a large number of municipalities were passed, although information and estimates required by Statute to be given were not submitted, and other

statutory provisions had not been complied with, *ex post facto* legislation was passed in order to validate these illegal acts.

- 8 Edw. VII, Chap. 22, Sec. 1. "And the said by-laws of certain municipalities are hereby confirmed and declared to be sufficient, legal, valid and binding for the purposes thereof."
4. Information not having been given, estimates not having been submitted, and other statutory requirements not having been complied with, litigation was threatened, in order to prevent which the following Acts were enacted:—
 - 9 Edw. VII, Chap. 19, Sec. 3. "Notwithstanding any provision of any by-law of the council of any of the corporations hereinafter in this section mentioned to the contrary, the said contract as so varied shall be and the same is hereby declared to be valid and binding according to the terms thereof upon the Corporation of the City of Toronto, the Corporation of the City of London, the Corporation of the City of Guelph, the Corporation of the City of Stratford, the Corporation of the City of St. Thomas, the Corporation of the City of Woodstock, the Corporation of the Town of Berlin, the Corporation of the Town of Galt, the Corporation of the Village of Hespeler, the Corporation of the Town of St. Mary's, the Corporation of the Town of Preston, the Corporation of the Town of Waterloo, the Corporation of the Village of New Hamburg, and the Corporation of the Town of Ingersoll."
 - 9 Edw. VII, Chap. 19, Sec. 4. "It is hereby further declared and enacted that the validity of the said contract as so varied as aforesaid shall not be open to question and shall not be called in question on any ground whatever in any Court, but shall be held and adjudged to be valid and binding on all the corporations mentioned in section 3, and each and every of them according to the terms thereof as so varied as aforesaid and shall be given effect to accordingly."
5. The Mayor of the Town of Galt having declined to execute a contract, between the Town and the Hydro-Electric Commission, the following Act was passed:—
 - 9 Edw. VII, Chap. 19, Sec. 5. "The said contract as so varied as aforesaid shall be treated and conclusively deemed to have been executed by the said Corporation of the Town of Galt."
6. Actions having been brought, and in one case a judgment given adverse to the Hydro-Electric Commission, the following was enacted:—
 - 9 Edw. VII, Chap. 19, Sec. 8. "Every action which has been heretofore brought and is now pending wherein the validity of the said contract or any by-law passed or purporting to have been passed authorizing the execution thereof by any of the Corporations hereinbefore mentioned is attached or called in question, or calling in question the jurisdiction, power of authority of the Commission or of any Municipal Corporation or of the Councils thereof or of any or either of them to exercise any power or to do any of the acts which the said recited Acts authorize to be exercised or done by the Commission or by a Municipal Corporation or by the Council thereof, by whomsoever such action is brought shall be and the same is hereby forever stayed."
7. The agreement made between the Electrical Development Company and the Government of the Province of Ontario contains the following clause:—
 - "16. The Commissioners will not themselves engage in making use of the water to generate electric, pneumatic, or other power except for the

purposes of the Park, provided that in case the said Commissioners shall have granted or at any time may have granted to any other person or corporation license to use the waters of the said Niagara or Welland Rivers, and by reason of failure of such person or corporation to carry on the works so licensed the said Commissioners find it necessary to forfeit said license and take over said works, this clause shall not prohibit said Commissioners from operating such works for the generation and transmission, sale or lease of electricity or power."

8. But being desirous of constructing works on the Chippewa River and of taking water therefrom for the development of electrical power, the following legislation was enacted:—

6 Geo. V, Chap. 20, Sec. 3. "The Government may authorize the Commission to:—

"(a) Enter upon, survey and lay out, all such lands, water, water privileges and water powers as may be required for the construction of the works hereinafter mentioned;

"(b) Acquire options upon and enter into preliminary contracts for the purchase of land for sites, right-of-way, the location of buildings, plant, works, machinery and appliances required for the works hereinafter mentioned;

"(c) Construct, erect, maintain and operate works for the purpose of diverting the waters of the Niagara River, Welland River, and tributary waters, or any of them, and conveying the same by aqueduct, conduit or canal, or in any other manner, from any point on the Welland River, or on the Niagara River, above the Cataract, and discharging such waters into the Niagara River;

"(d) Construct, erect, maintain and operate at or in the vicinity of such place of discharge, works, plant, machinery and appliances, for the use of the waters so taken and diverted in the development of a water power for the production of electrical or pneumatic power or energy;

"(e) For such purposes, exercise all powers and enforce all rights which may be exercised and enforced by the Commission when taking land or other property in the exercise of powers conferred by or under The Power Commission Act."

Full powers are conferred upon the Commission to "construct, erect, maintain and operate works for the purpose of developing the waters of the Niagara River, Welland River (Chippewa River) and tributary waters or any of them," and to use the waters to develop electrical power in competition with the Electrical Development Company.

9. In order to prevent legal action on the part of the Company to restrain the proposed breach of the contract, the following legislation was enacted:—

6 Geo. V, Chap. 20, Sec. 7. "The exercise of the powers which may be conferred by or under the authority of this Act or of any of them, shall not be deemed to be a making use of the waters of the Niagara River to generate electric or pneumatic power within the meaning of any stipulation or condition contained in any agreement entered into by the Commissioners for the Queen Victoria Niagara Falls Park."

10. Although actually engaged in business in competition with the existing Power Companies, legislation has been enacted authorizing the Lieutenant Governor in Council to appoint Inspectors, who may enter upon the works of the companies and take measurements and tests to ascer-

tain the quantity of water used, the electrical and hydraulic efficiency of the machinery, the number of cubic feet per second necessary to produce a specific quantity of horse-power, to regulate the operation of the works, and to compel alterations therein, and to shut off the power and close the works as may be necessary. See 6 Geo. V, Chap. 21.

11. To aid the municipalities and assist them in borrowing the necessary moneys for the construction of Transformer Houses and Distribution Stations, the following Act was enacted:—

6 Geo. V, Chap. 19, Sec. 9. "Section 18 of the Power Commission Act is amended by adding thereto the following subsection:—

"(8) Where a corporation has entered into a contract with the Commission for the supply of electrical power or energy, the debentures issued for any works for the distribution and supply of such electrical power or energy by the corporation shall not be included in ascertaining the limit of the borrowing powers of the corporations as prescribed by the Municipal Act."

12. The Hydro-Electric Commission, having created a false demand for power at an arbitrarily low price, has exhausted its supply and is now without power for further requirements; it cannot proceed with the Chippewa Power Project without the consent of the International Waterways Commission and without variation of the terms of the Treaty between Great Britain and the United States.

There is a question in doubt which ought to go to the Courts to decide as to how much water the Electrical Development Company is entitled to take in order to develop under its franchise 125,000 horse-power for commercial use; without going to the Courts, because the procedure is too slow, as Sir Adam Beck explained, he has from his seat in Parliament accused the Electrical Development Company of stealing water beyond its franchise rights, and has brought down a Bill and rushed it through in the last fifteen minutes of the Session:—

This legislation denies to the company access to the Courts for the proper determination of its legal position; it will be observed that the three Judges do not sit as a Court, but as a Commission; they are appointed by the Government and there is no right of appeal.

The Act is entitled, "The Water Powers Regulation Act, 1917;" it provides as follows:—

"2. The Water Powers Regulation Act, 1916, is amended by adding thereto the following section:—

"13.—(1) Where the Inspector reports that the owner of a water power,

"(a) is diverting or using more water than such owner is entitled to divert or use; or

"(b) is developing or generating a greater amount of power in horsepower than such owner is entitled to develop or generate; or

"(c) has installed works and equipment capable of developing or generating a greater amount of power in horsepower than such owner is entitled to develop or generate.

"The Lieutenant-Governor in Council may appoint three commissioners, who shall be Judges of the Supreme Court of Ontario, to hold an enquiry under The Public Enquiries Act, and report to the Lieutenant-Governor in Council as to,

"(a) The quantity of water in cubic feet per second which such owner is entitled to divert or use.

"(b) the amount of power in horsepower which such owner is entitled to develop or generate;

"(c) the extent, if any, by which the capacity of the works installed or equipped by the owner, exceeds the amount of power in horsepower which the owner is entitled to develop or generate; and

"(d) as to the price and terms and conditions upon which, having regard to all the circumstances and to the rights of the owner as ascertained by the commissioners, the power to the extent of such excess should be delivered to the Hydro-Electric Power Commission of Ontario as hereinafter provided, and

"(e) as to such other matters connected with or arising out of the subject matter of this reference as they may deem expedient.

"(2) If the Commissioners find that the owner is diverting or using more water than he is entitled to divert or use, or is developing or generating a greater amount of power in horsepower than he is entitled to develop or generate, or that he has installed and equipped works exceeding in capacity the amount of power which he is entitled to develop or generate, the Lieutenant-Governor in Council may order the owner to deliver to the Hydro-Electric Power Commission of Ontario, upon the date named in the order, such amount of electrical power or energy as shall equal such excess as found by the report of the commissioners, or to operate the works of the owner to their full capacity and to deliver such excess power to the Hydro-Electric Power Commission of Ontario.

"(3) If the owner refuses or neglects to deliver such power after notice in writing so to do, he shall incur a penalty of \$1,000 per diem for every day during which such neglect or default continues to be recoverable by action in the Supreme Court at the suit of the Attorney-General of Ontario.

"(4) Nothing in this section contained shall affect or diminish any duty or obligation as to payment of any penalty or rental to which the owner might otherwise be liable for exceeding the amount of power which he is entitled to develop or generate, and all such penalties may be collected and all such rentals shall be due and payable and the like proceedings may be taken by the Crown or by any commission or other public body from which the rights or franchises of the owner are derived, as if this Act had not been passed."

13. "The Ontario Niagara Development Act, 1917," amending "The Ontario Niagara Development Act, 1916" (6 Geo. V, Chap. 20), extends the powers of the Hydro-Electric Commission by giving powers to that Commission which by the former Act were vested in the Lieutenant-Governor in Council, thus depriving the competing Power Companies and others competing with the Commission of their Parliamentary rights.

7 GEORGE V, 1917

(Approved 24 April, 1918)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 18th April, 1918.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the Seventh year of His Majesty's reign (1917), and received by the Secretary of State for Canada on 25th April last.

Chapter 7, intituled "An Act to amend The Mining Tax Act"; and

Chapter 22, intituled "An Act to amend The Water Powers Regulation Act"; are reserved for a separate report. The other statutes comprised in this volume may, in the opinion of the undersigned, be left to such operation as they may have, subject however to the following observations with regard to

Chapter 59, intituled "An Act respecting the appointment of a Commission for the Ottawa Separate Schools"; and

Chapter 60, intituled "An Act respecting the Roman Catholic Separate Schools of the City of Ottawa."

The first of these chapters, upon the narrative that the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa has heretofore neglected and refused to conduct the said schools according to law, and that it is desirable to provide for the appointment of a Commission to conduct and manage the said schools in case the Board make further default, provides that in the latter event the Minister of Education may, with the approval of the Lieutenant Governor in Council, appoint a commission to act in place of the Board, and that such Commission may take possession of and administer the property and assets of the Board, levying and collecting rates and taxes, and exercise and perform the rights, powers, privileges and duties of the Board, but that the conduct and management of the schools shall be restored to the Board by the Minister whenever it shall appear that the schools will be conducted by the Board according to law. It is further provided that if any question arise as to whether the circumstances justify the appointment or continuance of a Commission, it shall be determined on summary application by the Supreme Court at Toronto. Moreover it is provided that the Commission shall conduct the schools in accordance with the Separate Schools Act.

Chapter 60 in the preamble refers to a former Act of the Legislature of Ontario which was considered by Your Excellency in Council, Chapter 45 of 5 George V (1915) and the appointment of a Commission thereunder to conduct and manage the Roman Catholic Separate Schools of the City of Ottawa, which was held *ultra vires* by the Judicial Committee of the Privy Council, and it is stated that the Commissioners in carrying on the schools and meeting the obligations of the Board under the last mentioned statute disbursed large sums of money which were by law applicable to the maintenance and conduct of the schools, and in addition incurred a considerable liability which remains unpaid, and that the Board has commenced actions against the Quebec Bank, the Bank of Ottawa, and the Commissioners to recover the moneys so disbursed, and has refused to assume the liability of the Commissioners for the moneys unpaid, and that it is desirable to declare the rights of the parties. Upon these recitals several enactments follow, the effect of which is to declare the Commissioners indemnified and the liability which they incurred a debt of the Board which may be discharged out of the Consolidated Revenue Fund and recovered from the Board.

The Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa presented to Your Excellency in Council a petition for disallowance of these statutes upon grounds set forth, and copy of that petition is submitted herewith. Copy of the petition was referred, by direction of the undersigned, to the Government of Ontario for a reply, and the Attorney General of the Province has submitted to the undersigned copy of his report thereon to the Lieutenant Governor dated 18th March last, a copy of which is also submitted herewith.

The claim for disallowance, as will be perceived by reference to the petition, proceeds upon various grounds. It is said that these statutes constitute "an unjust, unwarranted, arbitrary and vexatious interference with the rights, privileges and duties" of the petitioners and the Roman Catholic Separate School ratepayers of the City of Ottawa, and "also gravely interfere with the vested rights of the creditors and bondholders" of the petitioners. A number of other grounds are stated by which the petitioners object that the legislation is *ultra vires* and it is argued that this follows from the recent decision of the Judicial Committee.

It appears, however, that the Lieutenant Governor in Council of Ontario referred to the Appellate Division of the Supreme Court of Ontario for hearing and consideration the question as to whether the provisions of Chapter 59 were within the legislative authority of Ontario, and that the learned justices of that court after hearing and consideration pronounced upon this question affirmatively giving very fully their reasons intended to demonstrate the propriety of their conclusion. The court distinguishes the legislation in question from the former statute which was pronounced *ultra vires*, and observes that the consequence of giving effect to the contention of council for the Board would be destructive of the Separate School system. The Attorney General observes that "from this judgment the School Board may appeal, and that their rights can thus be adequately determined in the courts."

Moreover, as to Chapter 60, the Act of Indemnity, the Attorney General states that: "The Ottawa Separate School Board at once after the passing of this Act brought three actions, one against the Quebec Bank to recover moneys standing to its credit when the Commission was appointed, one against the Bank of Ottawa for moneys deposited by the Commission, and one against the individual members of the Commission to recover the sum of \$84,156.04 representing taxes paid out of court to them, the Board repudiating all liability for money necessarily borrowed by the Commissioners to carry on the work of the schools. These three actions were consolidated into one. The several defendants pleaded Chapter 60 by way of defence, the School Board disputed its validity as prejudicially affecting its rights and privileges within the meaning of Section 93 of The British North America Act. The action came on for trial at Ottawa before Mr. Justice Clute of the Supreme Court of Ontario and judgment was on the 14th day of January, 1918, rendered by him declaring the said Act *ultra vires* the Ontario Legislature. From this judgment the defendants have lodged an appeal and the constitutional validity of this Act is thus now in process of determination through the courts."*

In these circumstances, seeing that the legal questions agitated by the petition with regard to both statutes have been determined by competent tribunals and are now subject to appeal, the undersigned is not prepared to assume the responsibility to recommend resort to an executive remedy for the grievances which the petitioners allege.

Furthermore, upon the question of the merits or justice of the legislation, assuming it to be *intra vires*, the undersigned observes that the subject of education is committed to the legislature by the special and exceptional provisions of Section 93 of the British North America Act 1867, and while notwithstanding these provisions the power of disallowance undoubtedly exists with regard to statutes affecting education as well as other matters committed to the provinces, the undersigned is not satisfied that the petitioners have made out a case for interference with the important particulars of provincial policy which are evidenced by these statutes.

On the contrary the Legislature has provided merely for the conduct of the schools if and while the Trustees neglect or refuse to discharge their duties; and, that the Commissioners who were formerly named to conduct and manage the schools while the Trustees were neglecting or failing to perform their duties shall be indemnified for the expenditures and liabilities incurred which were necessary to maintain and carry on the schools for the benefit of the community. It would thus appear that the ratepayers and those interested in the Roman Catholic Separate Schools have had the benefit of the expenditures in respect of which the Legislature is endeavouring to provide indemnity for the Commissioners. Moreover, no particulars of hardship or injustice are specified by the petitioners who seem to rely in support of their allegation solely upon the absence of legislative authority for the measure in question; and in such circumstances, seeing that the question of enacting authority

* (Note.—Trustees of R.C. Separate Schools v. Quebec Bank (1920) A.C., 230. On appeal from the Supreme Court of Ontario (Appellate Division) the Privy Council affirmed the decision of the appeal court that Chap. 60 is *intra vires* of the Ontario Legislature.)

is left to the Courts, the undersigned conceives that the alleged injustice or hardship of the legislation is far from self-evident.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government; also that a copy be transmitted to Mr. Samuel M. Genest, Chairman, for the information of the Board.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

To His Excellency the Governor General in Council:

THE PETITION of the Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa.

HUMBLY REPRESENTS:

1. Your Petitioners are the Trustees of the Roman Catholic Separate Schools for the City of Ottawa, duly elected by and representing the Roman Catholic Separate School ratepayers of the said City, and, as such, are by virtue of the laws governing Roman Separate Schools in the Province of Ontario, a body corporate entrusted with the management and control of the Roman Catholic Separate Schools for the said City of Ottawa and the administration of the property and assets thereof.

2. In the year 1915 the Legislature of the Province of Ontario by Chapter 45 of the Statute 5 George V, authorized the Minister of Education for the said Province to appoint a Commission for the purpose of vesting therein all or any of the rights, privileges and powers which your Petitioners so possess by law as aforesaid and to suspend or withdraw all of the said rights, privileges and powers. And thereupon the said Minister of Education did appoint such a Commission under the name "The Ottawa Separate School Commission," and on the 26th day of July, 1915, the said Commission forcibly took possession of the property and assets of your Petitioners and thereafter attempted to administer the same and to control and manage the schools entrusted by law to your Petitioners.

3. On the 6th day of November, 1916, on an appeal taken by your Petitioners to the King's Most Excellent Majesty, the Judicial Committee of the Privy Council declared the said Chapter of the Statute 5 George V to be *ultra vires* of the Legislature of the Province of Ontario and the said Commission to be without legal existence upon, among other, the following grounds, namely:—

(a) "The status of the appellant Board depends on the provisions contained in 'The Separate Schools Act, 1863.' Section (2) of that Act confers the right of electing trustees for the management of a separate school for Roman Catholics, not on all the adherents of Roman Catholic schools in the province, but on any number of persons, not less than five, being heads of families and freeholders, and householders, resident within any school section of any township, or corporate village, or town, or within any ward of any city or town, and being Roman Catholics. The right of electing managers is thus conferred on the supporters of a separate school or schools for Roman Catholics within one or other of the designated areas. In the present case the appellant Board are the elected trustees for the management of Roman Catholic Separate Schools within the City of Ottawa. They represent the supporters of the Roman Catholic Separate Schools within the area of the City, and as such elected trustees enjoy the right of management which was conferred under the Separate Schools Act, 1863. Apart therefore from any words of limitation or any implication to be drawn from the context, the appellant Board represent a section

of the class of persons who are within the protection of provision (1) of Section 93. Their Lordships can find neither limiting words nor anything in the context which would imply that they are excluded from the benefit of the provision.

(b) "The case before their Lordships is not that of a mere interference with a right or privilege but of a provision which enables it to be withdrawn *in toto* for an indefinite time. Their Lordships have no doubt that the power so given would be exercised with wisdom and moderation, but it is the creation of the power and not its exercise that is subject to objection, and the objection would not be removed even though the powers conferred were never exercised at all. To give authority to withdraw a right or privilege under these conditions necessarily operates to the prejudice of the class of persons affected by the withdrawal."

4. Notwithstanding the judgment of the Judicial Committee of the Privy Council, during the Session recently closed of the Legislature of Ontario, the following Bills, namely, Bill 153, intituled "An Act respecting the Appointment of a Commission for the Ottawa Separate Schools," and Bill 154, intituled "An Act respecting the Roman Catholic Separate Schools of the City of Ottawa," were introduced, passed and duly sanctioned.

The first above mentioned Bill purports to authorize the appointment by the Lieutenant Governor in Council of a Special Commission with power to perform the duties and exercise the rights and privileges of your Petitioners and to take and assume the control and management of the Roman Catholic Separate Schools by law so entrusted to your Petitioners, as well as the administration of the property and assets belonging to said schools.

The Bill mentioned secondly above purports to validate and render lawful and binding the acts of administration of the said The Ottawa Separate School Commission and the payments made and the liabilities incurred by the members of the said Commission under the provisions of the aforesaid Chapter 45 of the Statute 5 George V in the conduct and management of the Roman Catholic Separate Schools for the City of Ottawa from the time of the appointment of the said Commission down to the date of the Judgment aforesaid of the Judicial Committee of the Privy Council, to compel your Petitioners to pay and discharge all of the said expenditures and liabilities and to indemnify the members of the said Commission against any liability arising out of their administration of said schools.

5. Your Petitioners, by petitions respectively addressed and duly forwarded to and received by the Legislature of the Province of Ontario and the Lieutenant Governor of the said Province, humbly prayed that the said Bills should not be passed but should be reserved for the sanction of your Excellency, pursuant to the provisions in that behalf contained in the British North America Act, 1867, sections 56 and 90; but the Bills notwithstanding were put through their different stages and duly adopted.

6. During the discussion of these Bills in Committee and upon the motion for third reading it was moved in amendment that the Bills be referred to the Supreme Court of Canada in order to obtain the opinion of the said court as to the constitutional validity of said Bills. This amendment was rejected and the two Bills were sanctioned by the Lieutenant Governor of Ontario on the 12th day of April, 1917. The Acts in question are now chapters 59 and 60 of 7 George V.

7. Your petitioners respectfully urge that these Acts of the legislature of the Province of Ontario should be by your Excellency disallowed, and in support of their prayer beg to submit:—

A. That these enactments constitute an unjust, unwarranted, arbitrary and vexatious interference with the rights, privileges and duties, of your Petitioners and of the Roman Catholic Separate School ratepayers of the city of Ottawa in the control

and management of the said schools and the administration of the property and assets belonging to them; and also gravely interfere with the vested rights of the creditors and Bondholders of your Petitioners.

B. That these enactments prejudicially affect the rights and privileges with respect to said denominational schools which your Petitioners and the class of persons represented by them had by law in the Province of Ontario at the time of the passing of the B.N.A. Act, 1867, and which they since have had and now have, as specifically found and determined by the said judgment of the Judicial Committee of the Privy Council, rendered as aforesaid on the 6th day of November, 1916 (sub-section 1 of Section 93, B.N.A. Act, 1867).

C. That the Act intituled "An Act respecting the Appointment of a Commission for the Ottawa Separate Schools" contains the same provisions as are contained in said chapter 45 of 5 George V, which the Judicial Committee of the Privy Council has declared to be *ultra vires* of the Legislature of the Province of Ontario and the said Act purports to authorize precisely what the said Judicial Committee has formally declared to be beyond the powers of the said Legislature to enact.

D. That the Act intituled "An Act respecting the Roman Catholic Separate Schools of the City of Ottawa" purports to authorize and to do precisely what the said Judicial Committee has pronounced to be wholly beyond the powers of the said Legislature.

E. That the Acts in question were passed in opposition to and in defiance of the said Judgment of His Majesty the King in His Privy Council.

F. That these enactments, besides being unjust and vexatious, and passed without constitutional authority have gravely affected the peace and harmony between the citizens inhabiting the said Province and the Dominion of Canada. They are causing profound divisions among and arousing bitter animosity between the races which compose the great majority of the population of the Dominion.

G. That unless the said Acts are disallowed by your Excellency your Petitioners and those whom they represent will be deprived of the only substantial remedy against the provisions thereby enacted, and the only relief left to them will lie in a long, tedious and very expensive recourse to His Majesty the King's courts of law.

H. That the Legislature of Ontario, in enacting the said Acts, in defiance of the Judgment of the Judicial Committee of the Privy Council, has given conclusive evidence of its determination to re-enact these provisions, notwithstanding past or future decisions of His Majesty's final Court of Appeal.

I. That the refusal of your Excellency to disallow the said Acts would be looked upon by the majority in the Legislature of Ontario as an approval of this legislation.

Your petitioners also respectfully request that your Excellency should use the powers vested in your Excellency by Sections 56 and 90 of the B.N.A. Act, 1867, to compel complete obedience to and observance of the King's Most Excellent Majesty-in-Council finally determining this matter.

Your petitioners beg to be allowed to respectfully remind your Excellency that the laws concerning education in the Province of Ontario provide ample means, by way of mandatory injunction and other legal proceedings and by the imposition of fines and penalties, to compel School Trustees to perform the duties entrusted to them by law.

Your petitioners refer also to the following part of the Reasons for Judgment of the Judicial Committee:—

"They (their Lordships) cannot however assent to the proposition that the Appellant Board are not liable to process if they refuse to perform their statutory obligations, or that in this respect they are in a different position from other boards or bodies of trustees entrusted with the performance of public duties which they fail or decline to perform."

Your Petitioners beg to refer to "Canada's Federal System," Lefroy, at page 30:—

"It is right to notice the veto power which the Federal Government possesses over Provincial legislation, which is a special feature of the constitution of Canada distinguishing it from that of the United States. In words of the Privy Council: *Bank of Toronto vs. Lambe* (1887, 12 App. Cas. at p. 507) "Under the constitution of the United States, each state may make laws for itself, uncontrolled by the Federal Power, and subject only to the limits placed by law on the range of the subjects within its jurisdiction." "But in the case of Canada, the B.N.A. Act" makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the confederated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, *except under the control of the whole, acting through the Governor General*. "This Federal veto power is that principle of self-control of which the late Mr. Cardwell as Secretary of State for the Colonies, says, in a despatch to the Governor General of December 3rd, 1864, acknowledging the receipt of Quebec Resolutions: "The importance of this principle cannot be overrated. Its maintenance is essential to the practical efficiency of the system, and to its harmonious operation, both in the general government and in the government of the several provinces."

"The law of the Canadian Constitution." Clement, 3rd Edition, p. 153.

"A very sharp line of distinction was drawn between the exercise by the Dominion Government, as a *matter of political expediency* of the power of disallowance of provincial Acts, and the exercise by the Courts of the judicial function of declaring an Act *ultra vires*. As expressed by the Chancellor of Ontario, the supervision touching provincial legislation entrusted to the Dominion Government works in the plane of political expediency as well as that of jural capacity, while the question for the Courts is as to the latter merely. The framing of the Quebec Resolutions, upon which the B.N.A. Act is founded, was the work of the most eminent legal minds of that day in Canada; and a glance at the debates upon these resolutions will show that they thoroughly appreciated the distinction pointed out in later days by the Chancellor. Throughout the debates it was clearly recognized that the exercise by the Dominion Government of the power of disallowance was to be exercised in support of federal unity—e.g., *to preserve the minorities in different parts of the confederated provinces from oppression at the hands of the majorities*."

"Canada's Federal System," Lefroy, p. 43.

Mr. Doherty, in his report as Minister of Justice, dated January 20th, 1912, and duly approved by Order in Council, advised against disallowance, but at the same time he distinctly asserts that the veto power may constitutionally be exercised on ground of hardship and injustice to the rights affected. He says: "There was considerable discussion at the hearing as to the practice and precedents, in respect of disallowance of legislation by reason of unjust provisions, or because of contract and a recent report of the predecessor in office of the undersigned was quoted as showing that the Governor General should in no case be advised to disallow for such reasons. It is true as has frequently been pointed out, that it is very difficult for the Government of the Dominion, acting through the Governor General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights effected and this is manifest not only by expressions in reports of the Ministers, but also by the fact that but one single instance is cited in which the Governor General has exercised the power upon these grounds alone. The undersigned *entertains no doubt*, however, that the power is constitutionally *capable of exercise and may on occasion be properly invoked for the purpose of preventing not inconsistently with*

the public interest, irreparable injustice or undue interference with private rights or property through operation of local statutes *intra vires* of the legislatures.

Your Petitioners therefore respectfully pray that your Excellency may be pleased to disallow the said Acts.

And as in duty bound they will ever pray.

SAMUEL GENEST, *President*.

and 19 others.

Ottawa, April, 1917.

ONTARIO

DEPARTMENT OF ATTORNEY GENERAL

Report of the Attorney General for Ontario

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration a letter from the Deputy Minister of Justice dated 14th May last enclosing copy of Petition of the Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa praying for the disallowance of two Statutes of the Legislative Assembly of Ontario relating to the Ottawa Separate Schools being 7 George V (1917), chapters 59 and 60, and requesting the observations of this Government upon the subject.

The undersigned begs leave to submit the following with reference thereto and suggests that a despatch in the following terms be forwarded through the proper channels to the Secretary of State at Ottawa.

"The views of the Government of Ontario upon the subject of disallowance which have been consistently held and indicated more than once in despatches to the Secretary of State apply with regard to this Petition and are strongly urged by the Government of Ontario, but in order to avoid needless repetition and because these views have been expressed so recently that no doubt they are quite familiar—they are not repeated here, but reference is made to a despatch from His Honour the Lieutenant Governor of Ontario to the Secretary of State, dated the fourth day of April, 1916, and referring to a petition for disallowance of former Separate School Legislation, viz., 5 Geo. V, Cap. 45, (*see ante p. 115*) to a letter dated the 30th day of April, 1917, from the present Attorney General of Ontario to the present Deputy Minister of Justice dealing with the petition of the Electrical Development Company for the disallowance of The Water Powers Regulation Act, 1916, and the Ontario Niagara Development Act (*see ante p. 138*), and to a despatch dated March 19th, 1918, containing the views of this Government with reference to the said Petition of the Electrical Development Company for the disallowance of the said Act (*see post p. 178*), and to a supplementary petition by the same Company upon the same subject (*see post p. 176*) and the observations in the said despatches and letters contained so far as they are applicable are to be deemed to be incorporated in this despatch.

The undersigned further submits the following particular observations in answer to the said petition for disallowance."

The first Act (Chapter 59) provides for the appointment of a 'Commission to act in place of the Board of Trustees but only "whenever the Board shall neglect or refuse to conduct the schools under its control according to law." It differs in this and other material features from the Act of 1915 (5 George V, Ont. Cap. 45) which the Judicial Committee of the Privy Council held *ultra vires* (Trustees of the Ottawa Separate Schools v. Ottawa Corporation, 1917 Appeal Cases, 76).

The validity of said Chapter 59 was referred to the Appellate Division of the Supreme Court of Ontario and Judgment given on the 10th day of December, 1917, in favour of the constitutionality of the said Act. A copy of the Order in Council and

of the Judgment of the Chief Justice and Hodgins and Ferguson J.J. of the said Appellate Division are attached hereto and are to be considered as part of this despatch. From this Judgment the School Board may appeal and their rights can thus be adequately determined in the Courts.

The second Act (Chapter 60) is an Act of Indemnity. It enacts that the Commissioners who were appointed in July, 1916, to carry on the schools under the last mentioned Act, upon the failure of the elected Board to perform their duties as Trustees, shall be indemnified by the Board in respect of the payments made and liabilities incurred by the Commissioners in the maintenance and conduct of the schools while so under their charge. Further provisions protect the Commissioners from personal loss and confirm an Order in Council under which a Bond of Indemnity was given by the Minister of Education to the Quebec Bank. "The Ottawa Separate School Board at once after the passing of this Act brought three actions, *one* against the Quebec Bank to recover the monies standing to its credit when the Commission was appointed, *one* against the Bank of Ottawa for monies deposited by the Commission and *one* against the individual members of the Commission to recover the sum of \$84,156.04 representing taxes paid out of Court to them, the Board repudiating all liability for money necessarily borrowed by the Commissioners to carry on the work of the Schools. These three actions were consolidated into one. The several defendants pleaded Chapter 60 by way of defence, the School Board disputed its validity as prejudicially affecting its rights and privileges within the meaning of section 93 of The British North America Act. The action came on for trial at Ottawa before Mr. Justice Clute of the Supreme Court of Ontario and judgment was on the 14th day of January, 1918, rendered by him declaring the said act *ultra vires* the Ontario Legislature. From this judgment the defendants have lodged an appeal and the constitutional validity of this Act is thus now in process of determination through the Courts," which renders even more inadvisable the disallowance of this Act. Without in the slightest degree abandoning the position that the Courts should be left to deal with these Statutes a few observations as to the position of affairs which rendered the legislation necessary, may be made.

Both Statutes are concerned with the serious situation that has arisen from the defiant refusal of the Trustees of the Ottawa Separate Schools to observe the lawful regulations of the Department of Education or to comply with the general school law. They resemble, in that respect, the Act of 1915 which was similarly the subject of a petition for disallowance. His Royal Highness in Council by Order in Council dated the 28th of April, 1916, concurred in the report of the Honourable the Minister of Justice in which he recommended that the Act should be left to such operation as it might have. The undersigned respectfully submits that the reasons for declining to interfere with the Act of 1915 apply equally to the legislation of 1917.

The main ground of objection now urged against the two Acts of last session is that they attempt to re-enact the legislation of 1915, and it is suggested that, inasmuch as the Act of 1915 has been declared by the Privy Council to be *ultra vires*, the new legislation should on that account be disallowed. While the two Acts of 1917 have this in common that they relate to the affairs of the Ottawa Separate Schools, they deal with entirely different matters and must be considered separately.

Referring first to Chapter 59—"An Act respecting the appointment of a Commission for the Ottawa Separate Schools"—a comparison with the Act of 1915 and a perusal of the judgment of the Judicial Committee, which declares the latter *ultra vires*, will show that the allegations of the petitioners that Chapter 59 was passed by the Legislature "in opposition to and in defiance of the said judgment" or that "it contains the same provisions as are contained" in the Act of 1915, or that it "purposes to do precisely what the Judicial Committee has pronounced to be wholly beyond the powers of the Legislature" are founded upon a misconception of the Judgment and of the Statute concerned and are clearly incorrect, as may be seen by referring to the Judgments attached hereto.

The Act of 1917 is fundamentally different from that of 1915. The Act of 1915 for example, provided for the appointment of a Commission to manage the schools

upon *the opinion* of the Minister of Education in regard to specified acts of default by the School Board. The Minister was empowered by Section 3 (clause c) to suspend or withdraw all or any part of the rights, powers and privileges of the Board and *whenever he might think desirable* to restore the whole or any part of the same and to reconstitute the same in the Board.

It would appear that the judgment of the Judicial Committee was based upon the opinion that the Act *as framed permitted* the powers of the Board to be withdrawn *in toto* and at the discretion of the Minister. The possibility that under the foregoing provision the elected Trustees might be deprived of the control of the schools at a time when they were able and willing to perform their lawful duties and to conduct them according to law was, it is submitted, the fatal defect in the Act of 1915 which rendered it *ultra vires*. The point is thus dealt with in their Lordships' judgment (at page 79 of the report).

"The powers conferred on the Minister of Education in subsections (b) and (c) of section 3 are expressed in very wide terms. At the instance of the Minister, with the approval of the Lieutenant Governor in Council, all or any part of the rights, powers, and privileges of the appellant board may be suspended or withdrawn without limitation in time and only subject to restoration at the discretion of the Minister. The powers withdrawn from the appellant Board may be vested in and conferred upon an appointed Commission, a nominated body, in the selection of which the rate-paying supporters of the Roman Catholic Separate Schools have no voice. There is no exception to the universality of the extent to which all the rights, powers and privileges of the appellant Board may be suspended or withdrawn and vested in and conferred upon this nominated body."

(and at page 81)

"It is possible that an interference with a legal right or privilege may not in all cases imply that such right or privilege has been prejudicially affected. It is not necessary to consider such a possibility, and this question does not arise for decision in the appeal. The case before their Lordships is not that of a mere interference with a right or privilege, but of a provision which enables it to be withdrawn *in toto* for an indefinite time. Their Lordships have no doubt that the power so given would be exercised with wisdom and moderation, but it is the creation of the power and not its exercise that is subject to objection, and the objection would not be removed even though the powers conferred were never exercised at all."

These objections, upon which their Lordships' Judgment clearly is based, do not apply to Chapter 59. It will be observed that, under the Act of 1915, the elected Board might be wholly deprived of its statutory powers upon the opinion of the Minister of Education, and until such time moreover as he might think it desirable to restore them. The present Act cannot, however, be brought into operation except by actual misconduct of the Board. The appointment of a Commission is wholly conditioned upon the fact of wrongful default by the Board whereby the rights and privileges of the class they represent are necessarily in abeyance. Nor can the Board be deprived of its powers, indefinitely. The duration of the Commission is coterminous with default. The powers of the Board *must be restored* to it "whenever it shall appear that the schools will be conducted according to law." (Sec. 3) Its rights are further safeguarded by access to the Courts, the fourth section expressly providing that "if any question arises as to whether the circumstances justify the appointment or the continuance of a Commission" it shall be determined by the Courts. There can be no interference with the Board under this Act save in the single case of misconduct and only as long as it continues. It is the Board alone that

can create and continue the condition which makes the appointment and continuance of a Commission legal: These essential differences between the two enactments are sufficient to dispose of the contention which underlies the petition for disallowance that a decision of *ultra vires* upon the one is conclusive upon the other.

In the meantime the validity of Regulation 17 therein mentioned has been sustained by the decision of the Privy Council (*Trustees v. Mackell* [1917] Appeal Cases 62) and the Judgments of the Ontario Courts referred to in the despatch, whereby the Board was restrained from paying unqualified teachers or teachers refusing to observe the regulations of the Department have been affirmed.

In delivering the Judgment of the Judicial Committee the Lord Chancellor said (1917 Ap. Cases, p. 83) "their Lordships do not anticipate that the appellants (The School Board) will fail to obey the law now that it has been finally determined." This anticipation has not been realized. The undersigned regrets to state that since the Board has resumed possession and control of the schools it seems determined to continue its defiant attitude towards the Department of Education and its disregard of the law. Regulation 17 is not properly observed in the English-French schools. Many teachers employed by the Board in these schools are without legal qualification. Notwithstanding the Judgments and injunctions referred to in the despatch already mentioned, the Board is not only paying the salaries of teachers within their prohibition, but after obtaining control of the school funds, the Board has paid arrears of salaries to teachers without proper qualifications and to teachers who have neglected and refused to conform to the regulations of the Department. The undersigned conceives it to be the duty of the Legislature to employ all constitutional means within its power to uphold the due observance of the school law and to protect the rights of the minority. The Government is not unmindful of the remedies against school trustees who neglect to perform their duties or who wilfully disobey the provisions of a statute to which the petitioners refer. Its primary concern, however, is to ensure that the schools shall be kept open and maintained according to law for the education of the children entitled to attend them, and if, unhappily, it should be prevented by the misconduct or refusal of the elected Board, the appointment of a Commission as contemplated by this Act is the most efficient means to secure that result. The Act does not come into force until proclaimed by the Lieutenant Governor in Council (Sec. 9). His Excellency in Council may assume that the required proclamation will not be made except in the case of a necessity which only the School Board can create.

The remaining Act (7 George V, Cap. 60) deals wholly with the finances of the late Commission upon the following facts. The Commissioners who were appointed to carry on the schools in place of the Board on the 20th of July, 1915, took peaceable possession of the school premises and property on the 26th of that month and maintained and carried on the schools thereafter until the statute authorizing their appointment was declared by the Privy Council to be *ultra vires* in November, 1916, whereupon they at once surrendered possession and control of the schools to the Board. In the maintenance, conduct and management of the schools the Commissioners expended large sums of money and incurred large liability. All of these monies were expended in maintaining and carrying on the schools and wholly for payments and expenses which the Board itself should have made in the proper discharge of its lawful duties. The material facts are recited in the Act.

Their Lordships of the Judicial Committee in delivering Judgment make no reference to monies received and expended by the Commissioners, but in declaring the Act to be *ultra vires* the Order of His Majesty in Council provides "that liberty ought to be reserved to the appellants (the School Board) to apply to the said Supreme Court (of Ontario) for relief in accordance with this declaration." It may be assumed that an application to the Supreme Court of Ontario, which was seized of all the facts involved in the appeal, as contemplated by the Judicial Committee, would have dealt with and protected the rights of all parties having any interest in the monies expended or the liability incurred by the Commissioners under the circumstances.

The School Board has never applied to the Ontario Courts pursuant to the leave reserved but, on the contrary, as set forth above brought *three* actions which are now before the Courts for determination.

The undersigned submits, with confidence, that, for the reasons suggested, both Statutes, as far as the question of their constitutional validity under the British North America Act is concerned, in accordance with long established usage should be left to their operation without interference.

The petitioners have invoked the debatable principle that, in admittedly rare and exceptional instances, *intra vires* legislation may be disallowed on the ground that it is oppressive or unjust, as applicable to one or other or possibly to both of these enactments. Without admitting that this is a proper ground of disallowance it will be conceded that the principle should never be applied unless the legislation is unmistakably of that character and the burden of establishing is unmistakably of that character and the burden of establishing that it is undoubtedly lies upon those who allege it. The undersigned entertains no doubt that neither statute falls within that principle. He does not feel called upon to add to what has already been said in regard to the nature and operation of the Act (Chapter 59) which provides for the appointment of a Commission. He is surprised to find it suggested that the indemnifying Act (chapter 60) can be regarded as other than just and reasonable. The whole of the monies with which it deals were expended in carrying on the Ottawa Separate Schools and were used for the purpose to which alone they were applicable. They have been applied precisely as they should have been applied in the hands of the Board. The Commissioners acted throughout in the bona fide belief that they were legally and properly appointed to carry on the schools, and they acted only as long as they were supported in that view by the Judgments of the Courts. Trustees so acting, even if technically without right, are entitled to indemnity, this statute merely confirms their right in that respect. A large number of the supporters of the schools representing, it is claimed, the greater share of financial interest in the monies involved, are strongly opposed to the action of the Board in seeking to recover the monies which were spent on their behalf, and the plaintiffs in the action in which the injunctions against the Board were granted have at their own request been added as parties defendant to the pending litigation and are resisting the claims made by the Board.

Having regard to the full discussion of the subject in the despatches previously transmitted by His Honour the Lieutenant Governor, to which reference has already been made, it is unnecessary to add that both of the enactments now before His Excellency in Council are, in the opinion of this Government necessary provisions to secure the observance of the regulation of the Department of Education for the use and efficient teaching of the English language in the Ottawa Separate Schools and that these Regulations express "a very deliberate and important feature in the policy of the local Government" on the subject of education which is committed "in a very special manner" to the exclusive jurisdiction of the Province.

18 March, 1918.

ATTORNEY GENERAL FOR ONTARIO.

(Approved 24 April.)

DEPARTMENT OF JUSTICE, OTTAWA, April 19th, 1918.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon chapter 22 of the statutes of the legislature of Ontario passed in the 7th year of His Majesty's Reign 1917 entitled "An Act to amend the Water Powers Regulation Act" copy of which

was received by the Secretary of State for Canada on 25th April last. A petition for the disallowance of certain legislation of Ontario including the statute now in question was presented by the Electrical Development Company of Ontario, Limited, and this petition was considered by Your Excellency in Council upon the report of the undersigned of 3rd May last which was approved by Your Excellency on the following day. In the result the undersigned declined to submit any recommendation upon two of the statutes under consideration, namely, chapters 20 and 21 of 1916, and the consideration of chapters 21 and 22 of 1917 was reserved. The Electrical Development Company has renewed its petition for the disallowance of chapter 22 and the company has presented a fresh petition setting forth its grounds, copy of which is submitted herewith. Upon reference of this petition to the Government at Toronto the solicitor of the Attorney General's Department has furnished to the Deputy Minister of Justice copy of a report of the Attorney General of the Province without regard to the matters alleged by the petition copy of which report is also herewith submitted. Moreover at the instance of the petitioners' solicitors the undersigned appointed a day for the hearing of the matter of the petition and counsel attended before him on behalf of the Company and the bond-holders of the Company and also counsel for the Attorney General, when the matter was very fully discussed.

The statute in question is an amendment of the Water Powers Regulations Act and it provides that in specified cases the Lieutenant Governor in Council may appoint three commissioners, Judges of the Supreme Court of Ontario, to hold enquiry and report to the Lieutenant Governor in Council as to the quantity of water or the amount of power which the owner of a water power is entitled to divert or use, develop or generate; as to the extent, if any, by which the capacity of the works exceeds the amount of power to which the owner is entitled; as to the price, terms or conditions which the power to the extent of any such excess should be delivered to the Hydro-Electric Power Commission of Ontario, and as to such other matters as the commissioners may deem expedient. Then it is provided that if the commissioners find that the owner is diverting or using, developing or generating more water or power than he is entitled to, or that he has installed and equipped works exceeding in capacity the amount of power which he is entitled to develop or generate, the Lieutenant Governor in Council may order the owner to deliver to the Hydro-Electric Power Commission of Ontario, an amount of electric power or energy equal to the excess, or to operate the works to their full capacity and deliver the excess to the said Hydro-Electric Power Corporation; and that for refusal or neglect to comply with any such order upon demand, the owner shall incur a penalty of \$1,000 per day for every day of default.

It is urged by the petitioners that these provisions are *ultra vires* of the legislature and moreover that they operate so injuriously in their application to the petitioners and the litigation which is pending between the petitioners and the Government of the Province, which is quite fully explained in the papers submitted, that Your Excellency should, on that account, disallow the Act.

The undersigned has given careful consideration to the petition and what was alleged by counsel on both sides, and he adheres to the conclusion that the questions affecting the validity of the Act may be more conveniently and satisfactorily determined by the Courts than by Your Excellency in Council upon the recommendation of the undersigned; therefore he would not recommend disallowance upon the ground that the Act is constitutionally invalid.

The interposition of a commission named by the Lieutenant Governor in Council to determine questions of fact or questions of interpretation of contract depending in litigation between the government and the petitioners is an exercise of power, if the power exist, of which the commissioners seem to have reason to complain, especially when it is considered that refusal or neglect of petitioners to comply with an executive order based upon the finding of the commission is to be visited by a

penalty of \$1,000 per day. The effect of these legislative provisions upon the pending litigation is uncertain, and it is obvious that considerable embarrassment or hardship may result if the commission and the Courts in the ultimate result should reach different conclusions upon the same question.

The legislation, however, at least secures to the petitioners, as to the questions which may be submitted to the commissioners the consideration of a tribunal of judges of the Supreme Court who presumably would not be influenced in their determination by the fact that they are specially selected by the Lieutenant Governor in Council, and moreover presumably they would determine these questions upon the same considerations and principles as would be binding upon them in their judicial capacity. Beyond this the undersigned is unable to offer any suggestion favourable to the course which the legislature has adopted and it is with very great hesitation that he has concluded that in view of the precedents, and the principles which have governed the Ministers of Justice in their recommendations upon local legislation, he ought not to advise the disallowance of this statute.

The undersigned recommends that a copy of this report if approved be transmitted to the Lieutenant Governor of Ontario for the information of His Government and that a copy be also transmitted to Mr. D. L. McCarthy, K.C., of Toronto, the petitioners' solicitor.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

A PETITION respecting the Water Powers Regulation Act, 1917, being 7 Geo. V, Chap. 22, of the Statutes of Ontario.

To His Excellency the Governor General in Council:

The humble petition of the Electrical Development Company of Ontario, Limited, a Corporation having its Head Office in the City of Toronto, in the Province of Ontario, Sheweth:

1. That your Petitioner did, on the 21st day of April, 1917, present a petition to your Excellency in Council, praying for the disallowance of certain Acts of the Legislature of the Province of Ontario, known as the Ontario Niagara Development Act and the Water Powers Regulation Act, 1916, being 6 Geo. V, Chap. 20 and 21, respectively, of the Statutes of Ontario, and also the Ontario Niagara Development Act, 1917, and the Water Powers Regulation Act, 1917, being 7 Geo. V, Chap. 21 and 22 respectively, of the Statutes of Ontario.

2. Subsequently on the 4th day of May, 1917, your Excellency in Council was pleased to consider the said Petition and to approve of the report thereon prepared by the Honourable the Minister of Justice, whereby consideration of the above Statutes of 1917 and of the request for submission of all of the above Statutes to the Supreme Court of Canada was reserved.

3. Section 2, being the only operative section of the Water Powers Regulation Act, 1917, provides that the Water Powers Regulation Act, 1916, be amended by adding as Section 13 thereof, a provision to the effect that the Lieutenant Governor in Council may appoint three judges of the Supreme Court of Ontario, including the Chief Justice of Ontario, to be commissioners to hold an enquiry under the Public Enquiries Act of Ontario into the rights possessed or exercised by any owner of a water power upon a report being received to the effect that such owner has in some manner been exceeding his rights. The Commissioners are to determine whether the owner of a water power has machinery of a capacity to develop more electricity than he is developing or is entitled to develop. The same section further provides that the Lieutenant Governor in Council may make certain orders in accordance with the findings of the Commission-

ers to the end that the owner of a water power shall use his machinery to its utmost capacity, and deliver to the Hydro-Electric Power Commission such power as may be developed in excess of the amount which the owner is licensed to develop, upon such terms as the Commissioners appointed under the Act may advise. And it is further provided that the owner shall be liable to a penalty of One Thousand (\$1,000) Dollars per day in case of disobedience of such order; all of which may be more particularly ascertained by reference to the said Act.

4. By a Writ of Summons issued in the Supreme Court of Ontario the 9th day of May, 1917, the Attorney-General of Ontario and the Commissioners for the Queen Victoria Niagara Falls Park commenced an action against your Petitioner to recover damages for the alleged breach of the agreement mentioned in paragraph 3 of the said Petition for disallowance and for an injunction restraining your Petitioner from developing power in excess of its rights.

5. By an Order in Council made on the 25th day of July, 1917, supplemented by Letters Patent bearing the same date, the Lieutenant-Governor in Council of Ontario purported to act pursuant to Section 2 of the Water Powers Regulation Act, 1917, in appointing the Honourable Sir William Ralph Meredith, Chief Justice of Ontario, the Honourable Mr. Justice Sutherland and the Honourable Mr. Justice Kelly, being Judges of the Supreme Court of Ontario, to be three commissioners to conduct an enquiry respecting your Petitioner for the purposes set forth in the said Act.

6. On the 22nd day of September, 1917, your Petitioner commenced an action in the Supreme Court of Ontario against the Commissioners for the Queen Victoria Niagara Falls Park for a declaration defining the rights of your Petitioner under its contract with the defendants, being the agreement referred to in paragraph 3 of the said petition for disallowance and in paragraph 4 hereof. The Statement of Claim was delivered on the 5th day of October, 1917, and a copy thereof is herewith submitted.

7. In the said action brought by your Petitioner and in the said action brought by the Attorney-General of Ontario and the Commissioners for the Queen Victoria Niagara Falls Park, the matters in dispute are the same as the matters now submitted to the Commissioners appointed under the Water Powers Regulation Act, 1917. The said Commissioners are now proceeding to hear evidence and determine matters which are already properly before the Courts of Ontario.

8. In prosecuting the action brought by your Petitioner, your Petitioner is making use of the legal, proper and constitutional means of having its rights defined, but the proceedings purported to be authorized by the said Water Powers Regulation Act, 1917, cannot fail to be prejudicial to the proper determination of your Petitioner's rights and to the proper enforcement thereof in due course of law.

9. The matters in dispute between your Petitioner and the Commissioners for the Queen Victoria Niagara Falls Park or other representatives of the Government of Ontario, are solely questions of law relating to the interpretation of the agreement mentioned in paragraph 3 of the said petition for disallowance and there are no questions of fact in dispute to the knowledge of your Petitioner.

10. Your Petitioner submits that the Water Powers Regulation Act, 1917, is ultra vires of the Legislature of the Province of Ontario and contrary to the policy of the Canadian Constitution, for the reasons set out in the said petition for disallowance and for the following additional reasons:

(a) The said Act, in effect, attempts to create a superior court of civil jurisdiction, but reserves to the Lieutenant-Governor in Council the appointment of the judges thereof, contrary to section 96 of the British North America Act, 1867. Or, in the alternative, the said Act purports to authorize the Lieutenant Governor in Council to interfere with the property and rights of your petitioners in an arbitrary manner and without process of law, whereas there is no provision in the British North America Act, 1867, which confers such authority upon the Legislature of Ontario.

(b) The said Act attempts to impose upon Judges of the Supreme Court of Ontario duties other than their proper judicial duties, contrary to section 33 of the Judges' Act.

(c) The proceedings under the said Act purport to affect a determination of questions of law without appeal contrary to the tenor of sections 35, 36, 48 and other sections of the Supreme Court Act and of the Imperial Statute, 7 and 8 Vict., Chap. 69, Sec. 1, known as the Judicial Committee Act, 1844.

(d) The said Act, in so far as it purports to compel the working of a power plant to its full capacity or in excess of its lawful output is the regulation of trade and commerce within the meaning of clause 2 of section 91 of the British North America Act, 1867, whereby jurisdiction in the matter is exclusively conferred upon the Parliament of Canada.

(e) The said Act, in so far as it is applicable to the Niagara River and certain other rivers, conflicts with the jurisdiction and proprietary rights of the Canadian Government over or in the said rivers and the waters thereof.

Your Petitioner therefore prays that your Excellency in Council will again take into consideration the Water Powers Regulation Act, 1917, and that your Excellency may be pleased to disallow the said Act or to refer the question of the constitutional validity of the same to the Supreme Court of Canada.

And your petitioner will ever pray, etc.

THE ELECTRICAL DEVELOPMENT COMPANY OF ONTARIO, LIMITED.

By D. L. McCarthy, of Toronto, Ontario, their solicitor.

(Report of the Attorney General for Ontario.)

TORONTO, March 19th, 1918.

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration two letters from the Deputy Minister of Justice, one dated the 24th April last enclosing copy of Petition of the Electrical Development Company of Ontario, Limited, praying for the disallowance of two Statutes of the Legislative Assembly of Ontario, being *The Ontario Niagara Development Act, 1917*, and *The Water Powers Regulation Act, 1917*, and the other letter dated November 9th, 1917, and enclosing supplementary Petition of the Electrical Development Company, Limited, upon the same matter, both letters requesting the observations of this Government upon the subject.

The undersigned begs to submit the following with reference thereto and suggests that a despatch in the following terms be forwarded through the proper channels to the Secretary of State at Ottawa.

On the 24th April, 1917, the Deputy Minister of Justice communicated with the Attorney General for Ontario by letter covering copy of a petition of the Electrical Development Company of Ontario, Limited, praying for the disallowance of two Statutes of the Legislative Assembly for Ontario being *The Ontario Niagara Development Act, 1916*, 6 George V, Chapter 20, and *The Water Powers Regulation Act, 1916*, 6 George V, Chapter 21, and also the disallowance of two other Statutes of the Legislative Assembly of Ontario, being *The Ontario Niagara Development Act, 1917*, 7 George V, Chapter 21, and *The Water Powers Regulation Act, 1917*, 7 George V, Chapter 22.

The Deputy Minister of Justice explained that the Petition had only been received by the Department of Justice on the 21st April and that the time for disallowance would expire on 5th May, 1917, so in consequence of the limited time at the disposal of the Ontario Government, instead of forwarding a despatch through the usual channels of communication, the Attorney General on the 30th April answered the Deputy Minister of Justice by letter in which were set out the views of the Ontario Government.

The Honourable the Minister of Justice in a report of the 3rd of May, 1917, set out that he was not prepared to make any recommendation with regard to the said

Statutes being Chapter 20 and 31 of the Ontario Legislative Assembly Act, 1916, but reserved consideration of the Statutes of 1917 and of the question of a reference to the Supreme Court.

In November, 1917, the Deputy Minister of Justice sent to the Attorney General for Ontario a copy of a further or supplementary Petition of the Electrical Development Company of Ontario praying for the disallowance of the Water Powers Regulation Act, 1917, and requested the observation of the Attorney General of Ontario in reply to the allegations of the Petition.

With regard to the general question of disallowance, the letter of the Attorney General, to the Deputy Minister of Justice of the 30th April, 1917, above mentioned is referred to but as this Government considers that the stand which is always taken upon questions of disallowance should be borne constantly in mind the general observations in the said letter are repeated in this despatch both for convenience and in order that this Government's position upon this subject may be thoroughly understood and reference is also made to the contents of the said letter from the Attorney General for Ontario with regard to particular statements made in the Petition for disallowance which Petition is directed at not only the Statutes passed in the year 1916 but also to the Ontario Niagara Development Act, 1917, and the Water Powers Regulation Act, 1917, and the particular observations in the said letter while not repeated in this despatch are adopted.

Upon the general question of disallowance it may be said that:

In pursuance of a general policy the Government of Ontario promoted and the Legislature passed the Acts in question and the said Acts deal with property and civil rights in the Province of Ontario, matters over which by the British North America Act, Section 92, sub-head 13, the Province has exclusive legislative jurisdiction.

The matters dealt with by the Acts also come clearly within the provisions of sub-head 16 of the same section, that is, "matters of a local and private nature."

The Acts referred to do not therefore fall within the list of cases referred to by the then Minister of Justice in a despatch from Ottawa dated the 8th June, 1868, and approved by His Excellency the Governor in Council on the following day in that they are not altogether illegal or unconstitutional nor are they illegal or unconstitutional in part nor do they conflict with legislation of the Dominion Parliament or affect the interests of the Dominion generally.

The Hon. Edward Blake, when Minister of Justice, in reporting on a petition for the disallowance of an Act of the Provinces of Ontario (38 Victoria, chapter 75) said:—

"The undersigned does not conceive that he is called upon to express an opinion upon the allegations of the petition as to the injustice alleged to be effected by the Act. This was a matter for the local Legislature."

The late Sir John Thompson, then Minister of Justice, in his report to Council upon the Act (48 Victoria, Cap 5), an Act in respect of certain sums of money ordered by the Legislative Assembly to be impounded in the hands of the Speaker, to which objection had been taken on the ground that it was an interference which the private rights of a creditor, used these words:—

"Without expressing any opinion as to whether the Act is a just measure or not, the undersigned is of the opinion that it is within the undoubted legislative authority of the Legislature of that Province and therefore respectfully recommends that it be left to its operation."

In *Hodge vs. The Queen*, 9 Ap. Cas. at page 132, Sir Barnes Peacock, in delivering the judgment of the Judicial Committee of the Privy Council, states:—

"When the British North America Act enacted there should be a Legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the Province and for provincial purposes in rela

tion to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 of the Imperial Parliament in the plenitude of its powers possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion.

In *Attorney General of Canada, vs. Attorney General of Ontario, et al* (1898), A.C. at page 713, Lord Herschell, in delivering the judgment of the Judicial Committee of the Privy Council, says:—

“The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of the legislation conferred. The supreme legislative power in relation to any subject-matter is always capable of abuse, but it is not to be assumed that it will be used improperly, if it is, the only remedy is an appeal to those by whom the Legislature is elected.”

The Hon. A. B. (now Sir Allan) Aylesworth, when Minister of Justice, in his report upon the petition to disallow two Ontario Statutes (6 Edward VII, Cap. 12 and 7, Edward VII, Cap. 15) used the following language:—

“It is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of annulling Provincial legislation even though your Excellency's Ministers consider the legislation unjust, or oppressive, or in conflict with recognized legal principles, so long as such legislation is within the power of the Provincial Legislature to enact it.”

He amplified this language in a forcible and telling speech in the House of Commons, March 1st, 1909, and reported in *Hansard* at page 1750, et seq., to which the Dominion Government is respectfully referred.

In 1901 the Hon. David Mills, then Minister of Justice, in reporting upon the disallowance of Provincial legislation, used this language:—

“The undersigned conceives that Your Excellency's Government is not concerned with the policy of this measure. It is no doubt *intra vires* of the legislature and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the Legislature, and the Acts of the Legislature may be ultimately judged by the people. The undersigned does not consider, therefore, that Your Excellency ought to exercise the power of disallowance in such cases.”

In the same year, speaking with reference to legislation of the Province of British Columbia which was then under consideration, the Hon. D. Mills said:—

“The undersigned bases his refusal to recommend disallowance upon the fact that the application proceeds upon grounds affecting the substance of the Act with regard to matters undoubtedly within the Legislative authority of the Province and not affecting any matter of Dominion policy. It is alleged that the Statute affects pending litigation and rights existing under previous legislation and grants from the Province. The undersigned considers that such legislation is objectionable in principle and not justified unless in very exceptional circumstances, but Your Excellency's Government is not in any wise responsible for the principle of the legislation and, as has been already stated in this report with regard to an Ontario Statute, the proper remedy in such cases lies with the legislature or its constitutional judges.”

A year later the Hon. Chas. (Now Sir Charles) Fitzpatrick, reporting upon British Columbia legislation, used these words:—

"It appears that litigation was pending between the Government and the petitioners, at the time of the passing of the Act, with regard to the Petitioners' liability to pay these royalties, and no doubt a very strong case is made out by the petitioners in support of the view that the Legislature should have allowed the existing law to operate and should not have undertaken to legislate so as to diminish or affect existing rights. The undersigned cannot help expressing his disapprobation of measures of this character, but there is a difficulty about Your Excellency in Council giving relief in such cases without affirming a policy which requires Your Excellency's Government to put itself to a large extent in the place of the Legislature, and judge of the propriety of its Acts relating to matters committed by the constitution to the exclusive legislative authority of the Province."

This Government therefore while it consider the Acts sought by the petitioners to be disallowed to be both right and just, entirely disavows the notion of the Petitioner in the present case that it is the office of the Dominion Government to sit in judgment on the right and justice of Acts of the Ontario Legislature.

With regard to particular observations to be made on the question of disallowance of both The Ontario Niagara Development Act, 1917, and The Water Powers Regulations Act, 1917, reference is made generally to the letter from the Attorney General of Ontario to the Deputy Minister of Justice dated the 30th April, 1917, and above referred to—from page 5, second paragraph to the conclusion of the said letter in so far as the same are applicable.

The matters remaining to be disposed of in respect of both the original and supplementary petitions appear to be the application of the petitioners for the disallowance of the two Acts of the Legislature of 1917 or in the alternative a reference to the Supreme Court of Canada under the Canada Supreme Court Act.

The Ontario Niagara Development Act (1917) is an Act supplementing and amending the Act of the same name of 1916. The subject matter of the Act of 1916 (which may be conveniently referred to as the principal Act) was the grant of authority to the Lieutenant Governor in Council to authorize the Hydro Electric Power Commission of Ontario, for and on behalf of the Province of Ontario to divert the waters of the Niagara River, Welland River and tributary waters from above the Cataract and to construct all the necessary works for the production of Electrical energy therefrom, for the purpose of supplying the present and future demands for power of the Municipalities of Ontario. All this appears plainly in the preamble and enacting clauses of the Act. It is to be assumed that, as disallowance of this Act was refused, the policy of the Act and the authority thereby conferred and the construction and operation of the works thereby authorized do not interfere with any Dominion interests or give rise to any questions which may now become the subject matter of any right or claim to disallowance. The amending Act of 1917 is concerned with the financial arrangements between the Hydro Electric Power Commission and the Municipalities to be served with power, and constituting the Commission trustee for the Municipalities of the works, &c. There is no allegation in either of the petitions inferring that there is or can be any possible objection to the method of the apportionment of cost among the Municipalities either for power or of the works. Assuming that the principal Act is unobjectionable what possible ground can be conceived for disallowing the supplementary Act.

The Water Powers Regulation Act (1917) is also an Act supplementing the Act of a similar name of 1916 (which also may be referred to as the principal Act). The subject matter of the Act of 1916 was the grant of authority to the Lieutenant Governor in Council to appoint inspectors to examine the works and records of any person developing Hydro Electric Power, for the purpose of preventing the waste of

water power and of enforcing in the interest of the public the full utilization of the water powers of the Province. The Act defined the duties of the Inspector and water power owners and authorized the Inspector to direct certain changes in the method of operation for more efficient and economical use of water; and provided compensation to be ascertained by arbitration where the owners had not benefited from the alterations, &c. Section 9, of the Act empowered the Lieutenant Governor in Council to direct the Inspector to enquire and report upon:—

- “(1) the amount of power which the owner of a water power is authorized to generate under any contract, lease, license or other instrument, or under any general or special Act of this Legislature or otherwise, and (2) as to the quantity of water which it is necessary, having due regard to efficiency and economy in development, to use for the purpose of generating such amount of power, and upon such report the Lieutenant Governor in Council may fix and determine, in horsepower, the amount of power which the owner shall generate and in terms of cubic feet per second the amount of water, which it is necessary to use in order to develop or generate such power.
- “(2) If the owner is dissatisfied with the construction so placed upon his rights, or with such limitations and definition, the Lieutenant Governor in Council may, upon the application of the owner, direct a reference to ascertain what rights, if any, have been restricted or impaired by such limitation and definition, and if it is found that such rights exist, and that they are so restricted or impaired, to ascertain the compensation that should be paid to such owner for such restriction or impairment.
- “(3) The amount of the compensation awarded to the owner upon such reference shall be paid to him in the same manner as the amount of a judgment recovered against the Crown.”

Due provision was also made for compensation for the restriction of any right and the manner of ascertaining the same. Sec. 10 empowers the Lieutenant Governor in Council to restrict and limit the rights of the owners of water powers where he deems it in the public interest and provides for compensation by arbitration.

It is to be assumed in the case of this Act also that as its disallowance was refused the policy of the Act and the authority thereby conferred, and the powers thereby granted to the Lieutenant Governor in Council, to control, limit and define the rights of owners of water powers, paying due compensation as therein provided do not interfere with any Dominion interests or give rise to any questions which may now become the subject matter of any right of or claim to disallowance.

The Amending Act of 1917 now under consideration provides for a special form of a Commission of enquiry for the purpose of informing the Lieutenant Governor of the circumstances under which he should exercise the powers conferred upon him by the principal Act. The Commission of enquiry merely reports to the Lieutenant Governor in Council the facts upon which he may take action and in effect the report takes the place or is an alternative to the report of the Inspector under the principal Act. It might be more correctly described as a further enquiry upon the report of the Inspector under the principal Act; and a more detailed method of ascertaining the compensation payable to an owner whose rights are interfered with. What possible objection can be entertained to the Act under consideration which is only a method of seeking to make more certain the information on which the Lieutenant Governor may base his action under the principal Act.

With regard to the second petition for disallowance which appears to be confined to the disallowance of The Water Powers Regulation Act, 1917, it may be said:—

That the custom of appointing Judges Commissioners by both the Dominion and Provincial Governments has been followed for many years and is not in any sense a violation of the spirit of section 33 of The Judges Act, but assuming that it were, this would not be a proper reason for disallowing The Water Power Regula-

tions Act, 1917, and in any case the Commission to be appointed under the said Act is a commission of inquiry or investigation only and its creation is as much within the powers of the legislature of Ontario as the provisions of the Ontario Public Works Act, for example, which provides for an inexpensive and expeditious method of determining compensation payable where the Crown exercises the power of expropriation under that Act.

That the action referred to in paragraph 6 of the Petition was commenced by the Petitioners after the passing of the Act of 1917, complained of, and after the appointment of the said Commission, the object of the Petitioners being doubtless to secure further delay in the determination of the matters in question.

That the property and contractual rights of the Electrical Development Company and of every other company incorporated under the laws of the Province of Ontario are subject at all times to provincial legislation and such legislation so far as it deals with rights acquired under the authority of the Statutes of Ontario is not a proper subject for review by the Government of Canada as to the question of its justice or propriety.

That if the provisions of The Electrical Development Company Act are contrary, (which the Government of Ontario denies) to those of the Imperial Statute, 7-8 Vict. Chapter 69, known as The Judicial Act of 1844, they cannot prevail and an appeal will lie to the Judicial Committee of the Privy Council under that Act notwithstanding anything contained in the Ontario Statutes of 1917.

That the provision of The Water Powers Regulation Act of 1917 which provides that the Commission may order the owner of a water power to operate his works to their full capacity and to deliver such power as may be found to be in excess of his franchise rights, to the Hydro-Electric Power Commission of Ontario, is not a regulation of trade and commerce within the meaning of clause 91 of the British North America Act of 1867, but a fair and reasonable provision for the disposition of power to which the Petitioners have no right and which they are developing upon the property of the Province of Ontario by exceeding that right under a franchise granted under powers conferred by the Queen Victoria Niagara Falls Park Commission on behalf of the Province and confirmed by the Legislature.

That the Government of Ontario does not admit that the Acts of 1916 and 1917 contemplate or authorize in terms or impliedly any violation of the rights of the Petitioners, while providing a means for ascertaining that those rights are not being exceeded and compelling compliance with the general laws of the Province and with the Statute confirming the franchise.

That it is the undoubted and hitherto unquestioned right of the Province to take for public uses any property which may be required when such taking is authorized by general or special legislation, and the method of determining how any rights of property shall be ascertained and the method of determining the compensation to be paid, is within the power conferred upon the Province by the Legislature with regard to property and civil rights in the Province by virtue of paragraph 13 of section 92 of The British North America Act of 1867.

That it is not a fact that the Act of 1917 in so far as it is applicable to the Niagara River and other rivers, conflicts with the jurisdiction and property rights of the Canadian Government over and in the said rivers and the waters thereof, and admitting that the legislation of the Province is subject to that of the Dominion as to rights of navigation, it is not necessary that Provincial legislation should be expressed to be subject to such rights, and the Dominion has no property rights whatever in boundary waters in the Niagara River or elsewhere, the title to the water and the bed of the river being in the Province to the international boundary, and subject to disposition under the law of the Province except in so far as this may be interfered with by the Dominion for navigation purposes.

That the Government of Ontario does not admit the right of the Dominion of Canada to take or use or authorize the taking or using of the waters of the Province for any other purpose than for the construction of navigation works.

With regard to the request in the said Petition for a reference by the Governor in Council under The Supreme Courts Act, Section 60, it has never been the practice for the Governor in Council to refer the constitutionality of Provincial Acts in which the Dominion is not interested, to the Supreme Court of Canada, and the Government of this Province respectfully submits that any such reference of the Acts in question would be a distinct and unwarranted interference with the rights of the Ontario Legislature and as the Judgment upon such references is advisory only, would also in its practical effect be futile.

I. B. LUCAS.

(Approved 24 April, 1918.)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 22nd April, 1918.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 7 of the Statutes of the Legislature of Ontario, passed in the Seventh year of His Majesty's reign, 1917; received by the Secretary of State for Canada on 25th April last, intituled "An Act to amend the Mining Tax Act."

The Canadian Copper Company, a corporation having its chief place of business within Ontario at the Town of Copper Cliff, in the District of Sudbury, has petitioned for the disallowance of this statute, copy of the petition and of a memorandum of law regarding the powers of the province to tax which accompanied the same submitted herewith. Upon reference of these papers to the Government at Toronto the Attorney General has submitted in reply copy of his report to the Lieutenant Governor of 23rd March last, copy herewith.

Counsel for the petitioning company having expressed a desire to be heard in support of the petition an opportunity was afforded, and counsel for the petitioner and for the Attorney General attended before the undersigned and submitted their arguments for and against the petition. The points of discussion are, however, sufficiently indicated by the documents, and the undersigned does not therefore find it necessary to review the oral arguments.

The Act, as is indicated by its title, is a general mining tax Act; the Canadian Copper Company claims that it is, in its application to that company, *ultra vires* of the provincial legislature, and moreover that the method of taxation sought to be applied is unjust and unequal and that the Act discriminates against the company to an extent to justify the interference of Your Excellency in Council.

The undersigned does not consider it necessary or advisable to discuss the question as to whether the taxation is direct or indirect or whether it is levied upon income earned or received outside the Province of Ontario, or by a company not subject to provincial legislative authority, or whether the tax is an export tax, because these are debatable questions which may be conveniently and satisfactorily dealt with by the courts.

The undersigned has given careful consideration to the allegations of injustice, inequality and discrimination, but he does not consider, in view of the discussion submitted, that these are so far established, or that the case made out is of such a character as to justify the disallowance of a measure providing such important amendments to the general taxing laws of the province.

There is a feature of the legislation which is not satisfactorily explained by the Attorney General's report. It would appear that for the purpose of ascertaining the annual profits of nickel and nickel-copper mines which are to be subject to the local

tax, provision is generally made for the deduction of taxes payable or profits taken under any Act of the Parliament of Great Britain and Ireland or of the Parliament of Canada upon or from the profits of the mine or mining work, or upon or from the profits made in smelting, refining or otherwise treating any of the products of the mine or mining work. There is, however, an exceptional provision, applicable only to mines the product of which is refined in Great Britain, whereby, during the present war and for the year in which the war terminates, any war tax or war profits paid to His Majesty's Government shall be deducted from the tax to be paid under the Act, so as not, however, to reduce the tax under the Act below a specified minimum. The Attorney General suggests in justification that profits in Great Britain are subject to onerous taxes. The same observation is, however, presumably true with regard to profits earned in this country; and, while perhaps the Canadian Copper Company does not suffer by reason of the deductions which companies refining their Canadian products in Great Britain are permitted to make, nevertheless, it cannot be said that these provisions do not evidence some diversity in the principle of taxation adopted as against companies of one class and of the other, or that the legislation does not place the British war tax upon a more meritorious or advantageous footing than the Canadian war tax.

It was urged that the method adopted for ascertaining the profits resulting from the operation of the mines upon which the tax is levied operates with special hardship as against the Canadian Copper Company, but it was pointed out on the contrary that the nickel-copper industry of the province is in the hands of three companies which are operating under different conditions, that the project of providing fair and equal taxation was, in the circumstances, a matter of some difficulty and that it had received very careful consideration by the Provincial authorities, resulting in the measure in question, and the undersigned is disposed to think, in view of these considerations, that even although some grounds of objection may be established to the justice or equality of the tax, the remedy should be found rather in application to the legislature than by means of review of the difficult question of provincial assessment by Your Excellency in Council.

The undersigned has not referred to the petitioner's suggestion that the statute conflicts with a prior legislative grant of immunity from taxation because he does not interpret the provisions to which the petitioner refers as intended to declare a policy with regard to the manner in which the taxing power would be exercised, and moreover, obviously the legislature could not limit its power by its own Act.

The Minister recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government; also that a copy be transmitted to Messrs. Osler, Hoskin & Harcourt, the Solicitors of the Company.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

PETITION FOR DISALLOWANCE of a certain Act of the Legislature of the Province of Ontario known as *The Mining Tax Act, 1917, being 7 Geo. V, Chap. 7, of the Statutes of Ontario for 1917.*

To His Excellency the Governor General in Council:

The Humble Petition of *The Canadian Copper Company*, a corporation having its chief place of business within Ontario at the Town of Copper Cliff in the District of Sudbury,

SHEWETH:

1. That Your Petitioner is a Company incorporated under the general laws of the State of Ohio, one of the United States of America, and is authorized by Special

Act of the Parliament of the Dominion of Canada being 48-49 Victoria, chap. 99 of the Statutes of The Dominion of Canada for 1886, to carry on the business of mining, smelting and refining with all the powers necessary and incidental thereto as in the said Act recited, within the said The Dominion of Canada and is also licensed to carry on such business within the Province of Ontario by License granted by the said Province on the 7th day of June, 1899.

2. That pursuant to the powers in the said special Act and the said License provided, Your Petitioner has carried on mining operations in Ontario for many years and at the present time owns various mines and mining properties in Ontario and is actively operating certain copper-nickel mines, among others being Creighton Mine, Crean Hill Mine, Number 2 Mine and Vermilion Mine, in the vicinity of the Town of Copper Cliff in the District of Sudbury and Province of Ontario.

3. That Your Petitioner owns and operates a smelter at the said Town of Copper Cliff at which all the ore produced from Your Petitioner's mines as aforesaid is partially treated, being converted into what is known as "Bessemer Matte" which is sold under contract, to The International Nickel Company, a corporation organized and existing under the laws of the State of New Jersey, one of the United States of America, with chief place of business at Constable Hook, Bayonne, New Jersey, and is shipped to the refineries of that Company within the United States where the process of refining the matte is undertaken and the finished product suitable for direct use in industries or arts without further treatment, is made.

4. That while the said The International Nickel Company now owns the entire Capital Stock of Your Petitioner, the said contract for the sale of matte to the said Nickel Company was originally entered into when there was a very considerably body of independent holders of shares of the Capital Stock of Your Petitioner and was of necessity entered into under circumstances wherein the contracting companies negotiated at arms length with each other.

5. That the only other companies now actively operating copper-nickel mines in the Province of Ontario are (1) Mond Nickel Company, Limited, which reduces the ore obtained from the mines it operates together with certain purchases of ore from other copper-nickel mines in the District (particularly the total output of The Alexo Mining Company, Limited,) to the state of "Bessemer Matte" which matte is then shipped to Great Britain where the refining process is undertaken and completed at works situate near Swansea in Wales, and (2) the said The Alexo Mining Company, Limited, whose entire output of ore is sold direct to the Mond Nickel Company, Limited.

6. That the legislature of the Province of Ontario did at its session of 1917 enact a measure entitled "The Mining Tax Act, 1917," being 7 Geo. V, Chap. 7 of the Statutes of Ontario for that year, amending certain sections of The Mining Tax Act being Chap. 26 of The Revised Statutes of Ontario, 1914, and adding certain new sections and subsections thereto.

7. That the said Mining Tax Act of 1917 purports to enact among other provisions, the following, being part of Subsection 1 of Section 4 of the said Act:—

"Section 5 of The Mining Tax Act is further amended by adding thereto the following subsections:—

"(3a) In the case of a nickel or nickel-copper mine the annual profits for the purposes of this Act shall be ascertained and fixed in the manner following, that is to say:—

"(a) The Mine Assessor shall ascertain the market value of the fine metal or other product or products, suitable for direct use in industries or arts without further treatment, arising from or contained in the output of the mine;

"(b) He shall deduct from the amount so ascertained the actual cost of marketing the metal or other product and of each process by which

the metal or other product is refined or treated, as shall be established to his satisfaction by the owner, manager, holder, tenant, lessee, occupier or operator of the mine;

"(c) He shall also make the deductions and allowances mentioned in clauses lettered *a* to *j* of subsection 3;

and the balance, after making the said deductions and allowances, shall be deemed and taken to be the annual profits of the mine on the year's output for the purposes of this Act.

"(3b) Where the owner, manager, holder, tenant, lessee, occupier or operator establishes to the satisfaction of the Mine Assessor that the output of a nickel or nickel-copper mine has been bona fide sold in the ordinary course of business by the owner, manager, holder, tenant, lessee, occupier, or operator, the Mine Assessor shall, notwithstanding the provisions of subsection 3a, ascertain and fix the annual profits of the mine in the manner provided by subsection 3.

"(3c) A sale shall not be deemed a bona fide sale within the meaning of subsection 3b where it is made directly or indirectly by an incorporated company to another incorporated company which is associated with or ancillary to the selling company or which controls or substantially controls the price to be paid or credited to the selling company for the output of the mine.

"(3d) During the present war, and for the year in which the same terminates, any war tax or war profits paid to the Government of Great Britain and Ireland by the owner, manager, holder, tenant, lessee, occupier or operator of a mine carrying on his refining operations in Great Britain shall be deducted from the tax under this Act, but not so as to reduce the tax under this Act in the case of a nickel or nickel-copper mine, to a sum less than three per centum on the excess over \$10,000 of the annual profits of such mine ascertained and fixed in the manner provided by subsection 3a, or in the case of a mine other than a nickel or nickel-copper mine ascertained and fixed in the manner provided by subsection 3."

8. That the effect and obvious purpose of Subsection (3a) of Section 5 as enacted by Section 4 of the Act of 1917 is to tax profits of the refining company. Though the language used is apparently general, yet the subsection is so worded that in the result, the profits of The International Nickel Company, the refining company, alone are taxed. These profits are made in the United States and never enter nor are enjoyed in Ontario and the refining business of The International Nickel Company, from which these profits are made, derives no protection from Ontario laws nor benefit from the Ontario Government.

9. That the said subsection (3a) does not in terms tax the profits of The International Nickel Company, but does so in substance and effect by declaring that the profits of Your Petitioner upon which the tax must be paid shall include, *inter alia*, these refining profits, since Your Petitioner is entitled to deduct under paragraph (b) of the subsection only the actual cost of refining and treating. In other words, the Legislature of the Province of Ontario attempts to bring into Ontario for purposes of taxation, profits made in the United States by a corporation operating under the laws of the United States by declaring that the profits of Your Petitioner shall for purposes of taxation be deemed to include these profits made in the United States which they in fact do not.

10. That the taxes sought to be imposed on Your Petitioner under and by virtue of the said subsection (3a) cannot have been assessed with the expectation or intention that Your Petitioner should itself pay them. On the contrary, the Legislature of the Province of Ontario shows a knowledge of the relationship existing between Your Petitioner and The International Nickel Company and expected and intended

that Your Petitioner which does not make nor enjoy the refining profits, should recoup itself for the tax upon it from The International Nickel Company which enjoys these refining profits. Your Petitioner being selected simply as a convenient object within the jurisdiction and not as the ultimate bearer of taxes.

11. That Section 4 of The Mining Tax Act, 1917, adding certain sections to Section 5 of The Mining Tax Act, 1914, has been enacted solely for the purposes of taxing the profits of Your Petitioner and of The International Nickel Company and of imposing upon these Companies a drastic and unequal tax from the severities of which all other companies operating copper-nickel mines are excluded. Thus the said Section 4, while general in terms, by subsection (3b) therein provided, permits The Alexo Mining Company, Limited, whose total output of ore is sold under contract to the Mond Nickel Company, Limited, to be taxed as are ordinary mining companies in the manner provided by subsection 3 of The Mining Tax Act, 1914, and again by subsection (3d) permits the said Mond Nickel Company, Limited, to deduct from the taxes payable by the said Company to the Ontario Government any and all war taxes or war profits paid by the said Company to the Government of Great Britain and Ireland subject only to certain qualifications as to the maximum amount deductible as in the said subsection prescribed, but, on the other hand, by subsection (3e) therein provided, not only seeks to refuse relief to Your Petitioner, but also seeks to insure that the fullest burden of taxation as in the manner provided by subsection (3a) shall fall upon Your Petitioner, thereby as Your Petitioner submits, seeking specifically to impose a special confiscatory tax upon Your Petitioner and on The International Nickel Company from the burdens of whose incidence there is provided in the Legislature itself, convenient loop-holes for the other copper-nickel companies operating in Ontario to escape.

12. That vested legal and proprietary rights in certain of the lands of Your Petitioner granted by patents issued prior to the 4th day of May, 1891, are violated by the said The Mining Tax Act, 1917. By section 3 of The Mines Act being Chap. 9 of the Statutes of Ontario for 1892 and subsequently embodied as section 3 of The Mines Act, Chap. 36 of the Revised Statutes of Ontario, 1897, it was enacted with reference to all lands granted by patent issued prior to the 4th day of May, 1891, that all royalties, taxes or duties which by any such patent or patents had been reserved, imposed or made payable upon or in respect of any ores or minerals extracted from the lands thereby granted, were repealed and abandoned and the said section further specifically enacted "that such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty." This statutory assurance of freedom from taxes which remained for many years upon the Statute Books of Ontario and which was widely advertised as an inducement to investment in Ontario, has created vested rights in respect of lands granted by patents issued prior to the 4th day of May, 1891, which as Your Petitioner submits are grossly contravened and violated by the provisions of the said The Mining Tax Act, 1917.

13. That the said The Mining Tax Act, 1917, while purporting to impose a direct tax on or in connection with mining operations within the Province of Ontario, in fact constitutes an attempt to impose an export tax upon nickel matte and virtually to prohibit the export of nickel mattes or any other form of unrefined nickel from the Province and to compel the refining of nickel within the Province or at least within the confines of the British Empire, such attempt either to impose an export tax or to impose taxes so burdensome as to be in result prohibitive, being without the powers of the Province as defined and limited by Section 92, Article 2, of The British North America Act.

14. That under the Powers given to the Provinces of the Dominion of Canada in respect of taxation by The British North America Act, which powers are limited by Article 2 of Section 92 of the said Act to "direct taxation within the Province in order to the raising of a revenue for provincial purposes," the Legislature of the Province of Ontario is precluded and restricted from imposing in the manner provided

by the said subsection (3a) the taxes sought to be imposed upon Your Petitioner, since such taxes in fact constitute neither direct taxation nor taxation within the Province.

15. That the Legislature of the Province of Ontario, not having the power to tax the profits of The International Nickel Company, cannot tax the said Company by any roundabout way as by declaring these profits to be profits of Your Petitioner and thus compel Your Petitioner to pay such tax and thereby necessarily compel it to recoup itself from The International Nickel Company.

16. That true copies of The Mining Tax Act, Revised Statutes of Ontario 1914, chap. 26, and The Mining Tax Act, 1917, 7 Geo. V. chap. 7, are submitted herewith.

17. That a memorandum of law concerning the powers of the Province to tax, with special reference to judicial interpretation of the scope and meaning of the terms "direct taxation" and "taxation within the Province" under and as employed in Article 2 of Section 92 of The British North America Act, is delivered herewith in support of this Petition.

18. Your Petitioner humbly submits:

I. That The Mining Tax Act 1917 is contrary to the policy of the Canadian Constitution and is *ultra vires* of the Province of Ontario for reasons hereinbefore set out, which may be summed up as follows:—

(a) The tax sought to be imposed upon Your Petitioner under the provisions of subsection (3a) is neither "direct taxation" nor "taxation within the Province" as defined and limited by Article 2, of Subsection 92, of The British North America Act.

(b) The Tax sought to be imposed upon Your Petitioner under the provisions of the said subsection (3a) constitutes in substance and effect an attempt to impose an export tax and further seeks to discourage or wholly prevent the shipment of unrefined nickel out of the Dominion of Canada thereby infringing upon the powers reserved to the Parliament of Canada, by Article 2, of section 91, of The British North America Act for the regulation of trade and commerce.

II. That the said The Mining Tax Act 1917 is prejudicial to the interests of The Dominion of Canada as a whole for reasons hereinbefore set out which may be summed up as follows:—

(a) The tax sought to be imposed upon Your Petitioner is in effect an attempt to impose penalties upon the operation of nickel-copper mines within the Province where the refining of the product takes place without the Province and an attempt to curtail or absolutely prevent the export of unrefined nickel by means of prohibitive taxation notwithstanding the vested interest in the mines established long prior to the attempted enactment of the prejudicial legislation, and as such is calculated to discourage the investment of capital in Canadian industries.

(b) The tax sought to be imposed upon Your Petitioner constitutes an attempt to reach by indirect and unfair means the profits of The International Nickel Company made and enjoyed outside Ontario by declaring its profits to be profits of Your Petitioner and as such is calculated to impair the reputation for good faith and fairness of Canadian Legislative bodies.

(c) The Tax sought to be imposed upon Your Petitioner is in violation of vested proprietary rights.

Your Petitioner therefore humbly prays that the Governor General in Council will be pleased to direct that the said The Mining Tax Act 1917 be disallowed or in the alternative, that the Governor-General in Council will be pleased to direct that the

question of the constitutional validity of the said Act be referred to the Supreme Court of Canada.

And your Petitioner will ever pray.

Dated at Toronto, this 28th day of November, 1917.

THE CANADIAN COPPER COMPANY,

By its Solicitors,

Osler, Hoskin & Harcourt.

Dominion Bank Building,
68 Yonge Street, Toronto.

MEMORANDUM OF LAW *Concerning the Powers of the Province to Tax, with special reference to judicial interpretation of the scope and meaning of the terms "direct taxation" and "taxation within the Province" under and as employed in Article 2 of Section 92 of The British North America Act.*

The British North America Act (Section 92, Article 2) confers upon a Provincial Legislature, power to impose "Direct Taxation within the Province in order to the raising of a Revenue for Provincial purposes." The powers given are specifically limited in their exercise to the imposition of taxes which in their nature satisfy all of the three requirements of being "direct" "within the Province" and levied for "the raising of a Revenue for provincial purposes." By Article 2 of Section 91, of The British North America Act, power to legislate in respect to the regulation of trade and commerce is conferred exclusively upon the Parliament of Canada.

It is submitted that the tax sought to be levied upon The Canadian Copper Company under and by virtue of subsection (3a) of Section 5 of The Mining Tax Act (as amended by The Mining Tax Act, 1917) so far as it purports to tax The Canadian Copper Company upon the profits of The International Nickel Company, is neither direct taxation nor taxation within the province, but constitutes in substance and effect an attempt to levy an export tax designed not primarily to raise a revenue for provincial purposes but rather to discourage and prevent the exportation of unrefined nickel from the Province.

1. It is not "direct taxation."

A "direct tax" is one which is demanded from the very persons who it is intended or desired should pay it.

Bank of Toronto v. Lambe, 12 A.C. 575, 583.

But in the case of the proposed tax on The Canadian Copper Company, on the contrary, the situation is very similar to that dealt with by the Privy Council in *Cotton v. R. (1914) A.C. 176*, where the whole succession duty was imposed upon a convenient person within the jurisdiction, in the expectation and desire that he should recoup himself from the various beneficiaries within or without the Province; and the taxation was held indirect and bad.

On page 195 the Court said:—

"To determine whether such a duty comes within the definition of direct taxation it is not only justifiable but obligatory to test it by examining ordinary cases which must arise under such legislation."

"The whole structure of the scheme of this succession duty depends on the system of making one person pay duties which he is not intended to bear, but to obtain from other persons."

2. The Taxation is not within the Province.

It has been held that the Province can tax a person domiciled within the Province, in respect to personal property outside the Province and also the personal property in the Province of a person domiciled outside it. But it is beyond the power of

"taxation within the Province" to tax a person in the Province in respect of property not belonging to him, but held and enjoyed outside the Province by a person domiciled and resident outside. The following authorities established this:—

Woodruff v. Attorney-General, 1908, A.C. 508, 513.

"The pith of the matter seems to be that . . . any attempt to levy a tax on property locally situate outside the Province is beyond their (the provinces) competence. . . . Directly or indirectly the contention of the Attorney-General involves the very thing which the Legislature has forbidden to the Province taxation of property not within the Province."

It has been doubted whether this language was correctly applied to the particular facts in that case, but no doubt seems to have been thrown upon the language itself.

Bank of Toronto v. Lambe, 12 A. C. 575, 584.

"It is urged that the Bank is a Toronto corporation having its domicile there and having its capital there; that the tax is on the capital of the Bank; that it must therefore fall on a person or persons, or on property not within Quebec. The answer to this argument is that class 2, of Sec. 92 does not require that the persons to be taxed by Quebec are to be domiciled or even resident within Quebec. Any person found within the Province may legally be taxed there if taxed directly. This Bank is found carrying on business there and on that ground alone it is taxed. There is no attempt to tax the capital of the Bank any more than its profits."

It seems plain from this passage that such an attempt would not have been supported.

The whole subject of "taxation within the Province" was fully discussed by *Anglin J. in R. v. Cotton*, 45 S. C. R. 469, 533, 539.—His conclusion is contained in the following extracts:—

P. 536. "In order that a provincial tax should be valid under the B. N. A. Act, in my opinion the subject of taxation must be within the Province. *To determine what is the real subject of taxation, the substantial result and not the mere form of the taxing Act must be considered.*"

P. 539. "The view I take of the B. N. A. Act provision is that it should be read as authorizing direct taxation only where the real subject of the tax, whether person, business or property is within the Province. In testing the validity; on this construction, of any particular provincial tax, it would of course, be necessary to determine what is the real subject of taxation."

And in the Privy Council, in the same case (*Cotton v. R.* (1914) A. C. at p. 193) the Court said:—

"The definition of property contained in the Act is admittedly too wide, if it is intended to form a basis for provincial taxation, since it would include the moveable property of any person who might be resident in the Province at the time of his death, whether domiciled there or not."

In re Muir estate, 51, S. C. R. 428, 455.

Anglin, J. reconsidered the views he had expressed on this point in the *Cotton* case, in the light of the reversal by the Privy Council of the judgment of the Supreme Court in that case. He concluded that his opinion had not been overruled or questioned, and he adhered to it.

Clement's Canadian Constitution, 3rd Ed'n. 662.

Provincial taxation must be laid directly upon the person from whom contribution to provincial expenditure is to be exacted.

Where neither property nor beneficiary is within the Province, it may be that any attempt to make the value of the property the basis in whole or in part of the sum to be exacted as a condition of local probate would be held to be indirect taxation.

Leprohon v. City of Ottawa, 2 A. R. 522, 534.

Hagarty, C. J.:

"Then when we looked at the right given to the Province of 'direct taxation within the Province,' can these words legitimately extend to such a subject matter as an income derived wholly or partially without the Province. The ordinary meaning of such words would, I think, apparently be taxation of persons or property within the Province."

Burton, J. A., p. 539:

"Under any well-matured or intelligible system we would expect to find municipal burdens so apportioned that the property partaking to a more or less extent of the benefits of police protection and local improvements would bear their fair proportion, and one would naturally expect that real and personal property having an actual situs within the municipality would be selected as fit subjects for taxation; *but upon what principle a person deriving income from property not protected by the municipal authorities should be taxed upon that income it is difficult to discover.*

Patterson, J. A., p. 560:

"Taxation within the Province must mean the taxation of property within the Province or a poll tax on persons within the Province."

Leprohon v. City of Ottawa, has been overruled upon the point actually decided, by *Abbott v. St. John*, 40 S. C. R. 597 but the force of the foregoing language does not seem to have been lessened.

See also, *Receiver-General of New Brunswick v. Rosborough* 24 D. L. R. 354.

3. If it is beyond the power of the Province to tax the profits of The International Nickel Company, it cannot do so by any roundabout way, as by declaring these profits to be profits of The Canadian Copper Company, which they are not.

The substance and effect of the legislation, not the form, must be looked at.

Levitt v. R., 43 S. C. R. 106,

Anglin, J., p. 160:

"The Legislature of a British Province, which is empowered to impose only taxation within the Province cannot by legislative declaration make anything property within the Province which would not otherwise be so according to recognized principles of English law. If it could, the constitutional limitation would be a mere dead letter."

See also *R. v. Cotton*, 45 S.C.R. 469, 536, quoted above.

Union Colliery Company v. Bryden (1899), A.C. 580.

Here the point was as to the validity of a Provincial statute dealing with the employment of Chinese in coal mines.

The Court said at p. 587:—

"The provisions may be regarded as merely establishing a regulation applicable to the working of underground coal-mines and if that were an exhaustive description of the substance of the enactments it would be difficult to dispute that they were within the competency of the Provincial Legislature. . . . But the leading feature of the enactments consists in this—that they have and can have no application except to Chinamen who are aliens or naturalized subjects, and that they establish no rule or regulation except that

these aliens or naturalized subjects shall not work or be allowed to work in underground coal-mines within the Province of British Columbia.

"Their Lordships are of the opinion that the whole pith and substance of the enactments consist in establishing a statutory prohibition which affects aliens or naturalized subjects, and therefore trench upon the exclusive authority of the Parliament of Canada."

A-G. v. Queen Ins. Co., 3 A.C. 1090:

Held that a tax on policies of insurance which was called a license in the statute, was really a stamp tax and therefore indirect and bad.

Leprohon v. City of Ottawa, 2 A. R. 522.

Spragge, C., p. 526:

"I premise that a Provincial Legislature cannot do indirectly what it cannot do directly. If it cannot impose a direct tax upon public salaries; Dominion as well as Provincial, it cannot empower municipalities to do so in the name of personal property or otherwise."

Patterson, J. A., p. 561:

"In construing the words of the second article of Sec. 92 of the B.N.A. Act as confining the power to tax property to property within the Province, we have necessarily to disregard the definition of property by the Ontario Assessment Act, so far as the status of the income as being property or as being within the Province depends on that definition."

In Cotton v. R. (1914), A.C. 176. The Privy Council disregarded the express tax on the transmission which might have made the tax good, and treated it as in substance a tax on the property transmitted, and upon the persons receiving it.

In John Deere Plough Co. v. Wharton (1915), A.C. 330, where the question was as to the validity of the B.C. Extra Provincial Companies Act, the Privy Council declined to regard the Act as a taxing or licensing Act and held that, whatever its form, it was in substance Company Legislation, and therefore *ultra vires* as against Dominion Companies.

4. The tax is in effect an export tax primarily designed to discourage and prevent the exportation of unrefined nickel rather than for the raising of a revenue for provincial purposes.

By imposing an Ontario tax upon the refining profits of The International Nickel Company made entirely in the United States, which profits are already subject to heavy taxes, imposed by the United States, the Act seeks indirectly to prohibit the importation of nickel to the United States in any other than its refined state. While the Act does not in terms purport in any way to regulate trade and commerce, its provisions are such as to leave no doubt that in result trade and commerce are affected far more than incidentally by the business conditions arising out of its operation.

It has been held that where legislation of this nature deals only with the property of the province itself, and is carefully drawn up so as not in any way to interfere with the rights of private property that has previously thereto become vested, such legislation is *intra vires* despite that there results a virtual prohibition of exportation. This was laid down in what is commonly called the "Sawlog" case.

Smylie v. The Queen (1900), 27 Ontario Appeal Reports, 172.

But in this case strong doubts were thrown by the Judges upon the validity of any attempt to apply similar legislation to products of lands which had become the property of private persons or corporations free from any condition on which they had been acquired from the Crown in the Province.

Again in "Correspondence Reports of the Minister of Justice and Orders in Council" compiled under the direction of the Minister of Justice upon the subject of Provincial Legislation 1899-1900 by W. E. Hodgins, M.A., at page 35, (*see ante p. 38*) the Minister of Justice referring to the above "Sawlog" case and writing to the Ontario Government says:

"but you could not have applied such a law (as the Sawlog Legislation) to the products of lands which belonged to private proprietors and in which the Crown in the Province has no longer any property."

Attention is directed to an Act passed by the Legislature of the Province of Ontario assented to on April 30th, 1900, being 63 Victoria, Chap. 13 of the Statutes of Ontario for 1900. This statute which in respect to the principles involved is "on all fours" with the present legislation complained of enacted by Section 4 that:—

"No owner of any mine shall carry on the business of mining for any ore or mineral in respect of which a license fee is imposed without first taking out a license under the provisions of the Act."

The Act provided by Section 7 for license fees on ores of nickel \$10 per ton or \$60 per ton if partly treated or reduced, for ores of copper and nickel combined \$7 per ton or \$50 per ton if partly treated or reduced. It also provided for the remitting of the licensee fee where ores or minerals that had been mined, raised or won in this province, were smelted or otherwise treated in the Dominion of Canada.

A Petition having been made to the Governor General in Council asking for disallowance of this Act upon grounds urged among others, that good faith should be kept, that the Act amounted to confiscation, that vested interests were threatened, that the Act was not a bona fide exercise of provincial jurisdiction but trenched on Dominion jurisdiction and that the license fees sought to be imposed were in reality export duties, after careful investigation and consideration of the whole matter the Minister of Justice notified the Ontario Government that he did not see any course open than that of a disallowance.

After considerable interchange of correspondence it was agreed that the Provincial Government should not bring any of the Sections complained of into effect, without prejudice to the right of either party to appeal to the Judicial Committee of the Privy Council.

It was consequently never attempted to enforce these license fees or to compel refining in Ontario and the legislation was subsequently repealed.

(Report of Attorney General of Ontario.)

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration the Petition presented to His Excellency the Governor General in Council by the Canadian Copper Company for the disallowance of an Act of the Legislature of Ontario entitled "The Mining Tax Act 1917" (7 George V, cap. 7), together with the accompanying memorandum of law, and begs leave to submit the following observations with reference thereto.

The Statute in question amends the General Mining Tax Act of Ontario (R.S.O. 1914, cap. 26), which has been in force since 1907, by repealing a subsection of section 5 of the General Act and substituting a new section therefor, and by adding thereto the new sub-sections set out in the petition. The effect of these amendments is to vary the rate of taxation on all taxable mines in Ontario, and, in the case of nickel and nickel-copper mines, to make the more precise provision for determining the annual profits of these mines for taxation under the General Act to which the petitioners object.

There are additional provisions in relief of mines or mining works paying any Imperial or Dominion tax on profits and also for limiting the amount of the Municipal Income tax on mines under the General Assessment Act. A disallowance of the Act would necessarily cause some uncertainty and confusion among the leading mine operators of this Province.

The petitioners allege that this amending Act is *ultra vires* the Province on the grounds that the taxation thereby imposed is (a) not direct action, (b) not taxation within the Province, and (c) not taxation for Provincial revenue within provincial competence, but (d) in substance and effect, an "export tax" and an infringement upon the powers of Parliament to regulate trade and commerce. These objections, as will be seen from the elaborate citation of judicial decisions in the memorandum of law submitted in their support, are all questions of law which, under the consistent practice of many years, are no longer regarded as grounds for disallowance, but are left to be determined in the ordinary jurisdiction of the Courts.

The objections are not confined to the question of the validity of the tax under the British North America Act but the petitioners claim, in addition, that by virtue of an Ontario Statute passed in 1892 (55, Vic., cap 9) they are relieved from all taxation by the Province—that by "a statutory assurance of freedom from taxes" in respect of certain of their lands they possess vested rights which are "grossly contravened and violated" by the provisions of the Amending Act.

The petition contains an alternative prayer that His Excellency in Council will be pleased to direct that the question of the constitutional validity of the Act be referred to the Supreme Court of Canada.

The undersigned respectfully submits that in accordance with well settled principles which regulate the exercise of the prerogative of disallowance, the petition discloses no ground for interference by His Excellency in Council with this legislation. Having regard, however, to the arguments advanced against the validity of the Act and the imputation that the Province has exceeded its constitutional powers of taxation for ulterior purpose, he thinks it desirable, by a brief examination of the amendment of 1917 and the object of its enactment, to show that the petitioners' complaints proceed largely from a misapprehension of its true nature and effect, and are without foundation.

Prior to 1907 there was no Provincial tax on the mining industry. Royalties on ores, including nickel ores, taken from lands granted or leased by the Crown had been imposed at various times and from time to time revoked, but no revenue was ever received by the Government from that source. The existing system of taxing mines on their net profits was introduced in 1907 (7 Edward VII, cap. 9), and it was thereby provided that three per centum of the annual profits on all mines in the Province, in excess of \$10,000, should be paid each year to the Provincial Treasurer for the use of the Province. The Act (now The Mining Tax Act, R.S.O. 1914, cap. 26) determines the annual profits for that purpose by section 5, ss. 3, which is as follows:—

(3) "Except where otherwise provided the annual profits shall be ascertained and fixed in the following manner, that is to say: The gross receipts from the year's output of the mine, or in case the ore, mineral or mineral-bearing substance or any part thereof is not sold, but is treated by or for the owner, tenant, holder, lessee, occupier, or operator of the mine upon the premises or elsewhere, then the actual market value of the output, at the pit's mouth, or if there is no means of ascertaining the market value, or if there is no established market price or value, the value of the same as appraised by the Mine Assessor, shall be ascertained, and from the amount so ascertained the following, and no other, expenses, payments, allowances, or deductions, shall be deducted and made, that is to say:—"

The specific deductions and allowances cover freight, working expenses above and under ground, costs of power, fuel and explosives, development work, insurance, depreciation and similar operating charges (ib. ss. 3a). Provision is made for the appointment of a Mine Assessor with defined powers and duties and for the necessary returns, inspections, etc., to secure the efficient operation of the Act and collection of the tax. It will be observed that (by sec. 5, ss. 3) if there are no "gross receipts," the amount from which the statutory deductions are to be made are determined either by the actual market value of the output at the pit's mouth, or at a value to be appraised by the Mine Assessor.

No difficulty has been experienced in determining the exact amount of annual profits subject to taxation of the taxable operating gold and silver mines in the Province, but under the peculiar conditions affecting the operations of the two great producing nickel companies at Sudbury, the petitioners and the Mond Nickel Company, differences and difficulties have arisen in determining the amount of the annual profits of these mines within the Province. The deductions can be easily ascertained, but different considerations apply to the pit mouth values of the ore, from which they should be made.

The petitioners own and operate valuable nickel mines and works in the Sudbury District, and all the mining properties in Ontario, including the vast deposits of ore as well as the extensive mining and smelting plants and works, with which the International Nickel Company is concerned, are owned and operated by and in their name. The ore is smelted at Sudbury by the petitioners to an 80 per cent matte of nickel and copper which is shipped for final treatment and separation to the works of an associate company at Constable Hook, New Jersey, where it is refined to the merchantable metals. The ore raised by the Mond Nickel Company, the other great Sudbury producer, is similarly smelted at its works in Ontario to a matte which is shipped to be refined at the same Company's refinery at Swansea, Wales. Referring to sec. 5, ss. 3 of the General Act (*supra*) there is no real transaction of open sale of ore or matte in either case from which the Mine Assessor could fix "gross receipts" or deduce the "actual market value of the output at the pit's mouth" for the purposes of the Act. The situation is correctly described in the report of the Royal Ontario Nickel Commission submitted to His Honour the Lieutenant-Governor on the 19th of March last, as follows:—

"The case of the nickel companies is more complicated. When the ore is not sold, the Act requires the tax to be collected on its value at the pit's mouth, less the specified deductions. 'If there is no means of ascertaining the market value, or, if there is no established price or value,' the value of the ore at the pit's mouth must be appraised by the Mine Assessor. Practically the whole of the nickel ore is raised by the two great operating companies themselves, and they are not at all dependent upon other nickel miners for any part of their supply. There is no open market, and no market price or value anywhere in America for nickel ore, such as, for instance, there is for iron ore at Lake Erie ports. The price paid for the small quantity of ore bought at Sudbury can hardly be said to establish a 'market price or value.' There is an entire absence of competition. If neither of the operating companies will buy the ore, it cannot be sold.

"Neither is there any real purchase and sale of the matte produced by the Sudbury furnaces. The company in Ontario simply ships the matte to the same or an affiliated company in Wales or New Jersey at an arbitrary or book-keeping price. The price is not material, since there is no real change in the ownership. In the case of the Canadian Copper Company under a long-standing agreement with the International Nickel Company and its predecessor, the Orford Copper Company, it is 10 cents a pound for the nickel contents of the matte and 7 cents for the copper.

"The Mine Assessor was therefore confronted with a difficult problem of ascertaining the true value of the nickel ores of Sudbury at the pit's mouth."

Under the General Assessment Act, (R. S. O. 1914, cap. 195, sec. 40) minerals, buildings, plant and machinery connected with mineral land, including concentrators and sampling plant, are not assessable for local taxation. The income from a mine may be assessed by the municipalities but only to a defined proportion of the Provincial profits tax on which it is credited. Having regard to the inherent difficulties and to the fact that the two Companies in 1916 smelted 1,521,689 tons of ore containing 41,299 tons of nickel and 22,430 tons of copper, it is desirable that the discretion and responsibility of the officials in arriving at the amount of the taxable profits should be narrowed and relieved by Statute as far as possible, and especially as a disclosure of treatment costs could not be obtained.

The sole object and purpose of the impeached enactment is to provide the method by which the annual profits of the nickel mines, operating under the conditions described, shall hereafter be determined, and shortly as follows. The Mine Assessor shall first ascertain the market value of the fine metal arising from ore contained in the output of the mine. The exact figures can be easily fixed. From this amount he is to deduct the actual costs of marketing the metal or other product and of all processes by which it is refined or treated, as these costs shall be established to his satisfaction by the tax payer. He makes the further deductions and allowances above mentioned and common to all mines under the Act. The remaining balance "*shall be deemed and taken to be the annual profits of the mine*" for taxation.

The taxation of an Ontario mine on its profits fixed at the pit's mouth is, intrinsically, direct taxation, within Ontario, and free from any extra-territorial element or from any element to make it "indirect taxation" within the well known rule of the decisions. The petitioners contend that, in their particular case, this tax offends in both these respects by reason of the facts that the International Nickel Company, as alleged, owns all the shares of the petitioner Company (and must accordingly bear its burden) and either itself or through an associated Company refines the product of the mine in the United States. The accident that the petitioners are an incorporated Company and that the whole or any part of its shares are held by a foreign corporation does not make the tax indirect. If the statement that the taxes in question "cannot have been assessed with the expectation or intention that the petitioner should itself pay them" has any other significance than to convey the argument that it has that effect, which would preclude an *ad valorem* tax on the ore in the ground, it is not correct. The argument has been anticipated by way of illustration and negatived by the Ontario Courts, (The Treasurer of Ontario v. Canada Life Insurance Company, 33 O. L. R. 433, at p. 436) in these words:—

"Bearing in mind that it has been held that a company possesses a distinct individuality from its shareholders, it might be argued from a theoretical stand-point that every tax imposed upon a joint stock company is indirect, because the taxation is in truth borne by the shareholders. But in the construction of this statute no such narrow interpretation can be given effect to, and the decision in *Bank of Toronto v. Lambe* is conclusive authority; for there the tax imposed upon incorporated companies was upheld."

In this case, which decided that a tax upon the gross premiums received by any insurance company in respect of business transacted in Ontario, as defined by an interpretation in the Act of wide scope, was direct taxation within the Province, the learned Judge said: "The term 'direct taxation' ought to be liberally and not narrowly construed, and all taxation which can fairly be regarded as direct should be permitted so long as it is confined 'within the Province'." In the present case, the Legislature has no concern with any incidence of the tax apart from the mine on which it is imposed and charged.

Neither does the fact that one or more of the processes of treatment takes place outside of the Province affect the validity of the tax. The tax is applied at the mine within Ontario. The costs of treatment emphasized in the petition are merely a

factor in computing "profits" for taxation; the place of treatment is immaterial. Any standard of costs as designated by any means in any part of the world, in Norway or New Caledonia, for example, might validly have been selected for that purpose. But it is better, and fairer to the mine owners, that the costs of the respective treatment of their own ores should be taken, as the Act provides, to determine the result which "shall be deemed and taken to be the annual profits of the mine on the years output." Judicial dicta from decisions upon the wholly different questions that have arisen under provisions in provincial Succession Duties Acts with reference to property locally situate without the Province would appear to be irrelevant. The language of Mr. Justice Middleton in the Insurance premiums case above cited (33 O.L.R. at p. 440) is directly in point. His Lordship says:—

"The application of any artificial scale to determine the amount to be paid where the company taxed is in the Province or has assets which can be reached within the Province, does not appear to me to change the nature of the tax or to take it outside the powers of the Legislature."

The petition further complains (paragraph 13) that while purporting to impose a direct tax within the Province the Mining Tax Act 1917 "in fact constitutes an attempt to impose an export tax upon nickel matte and virtually to prohibit the export of nickel mattes or any other form of unrefined nickel from the Province, and to compel the refining of nickel within the Province, or at least within the confines of the British Empire."

There is no question but that the world war has intensified the long standing anxiety of the Province that Ontario nickel should be refined in Ontario, or at least within the British Empire but, notwithstanding the satisfaction with which the secured establishment of nickel refineries in Ontario has been welcomed, the single object of the Mining Tax of 1907 as amended by the Act of 1917, is to derive a revenue for Provincial purposes from the profits of Ontario mines. The original Act has never been challenged on the ground of any ulterior purposes; and, in point of fact, extensive modern plants and works for refining nickel in Ontario had been commenced by the International Nickel Company and definitely settled by the British America Nickel Company, a strong company understood to be controlled by the Imperial Government before the Act of 1917 was passed. The provisions of this Act will apply equally to the costs of treatment at these Ontario works as at Constable Hook or Swansea. It contains no discrimination or penalty in favour of the mine whose ore is treated in Ontario, and in this material respect is cardinally different from the Ontario Statute under consideration (63 Vic., cap. 13) in the correspondence of the Honourable David Mills in 1901 to which the memorandum of the law refers. (*Ante pp. 37, 194.*)

This latter statute imposed a license fee of \$60.00 per ton on ores of nickel and of \$50.00 per ton on ores of copper and nickel combined if partially treated or reduced, but provided that these heavy fees should be remitted, or if collected should be refunded, upon ores smelted or otherwise treated within the Dominion of Canada by any process so as to yield fine metal. It was to this very substantial discrimination against refining outside Canada that the Minister of Justice took exception. The present Act contains no similar provision or other suggestion of an infringement upon the powers of Parliament.

The comments upon the legislation, if they have any relevance, in the 11th paragraph of the petition are due to some misapprehension. A progressive tax of five per cent on the net profits of a mine, to be determined by the deduction of all costs of production and treatment from the value of the product, in comparison with the prevailing burdens of taxation, can not be reasonably stigmatized as "confiscatory." There is, moreover, no disparity in favour of the Alexo Mining Company, the whole of whose small output of ore from the Alexo nickel mine in the Temiskaming District is sold to the Mond Nickel Company and smelted by the latter at its Coniston plant

with its own ore. This tax is determined under the Act by the "gross receipts" of the mine from these sales precisely as the petitioners' tax would be determined, under similar conditions. The petition complains of the provision (sec. 5, ss. 3 (d)) whereby any war tax or war profits paid to the Imperial Government by any taxable mine is, to a limited extent, deducted from the tax levied on mines under the Act. The taxation of British companies for war purposes is very onerous and the allowance made by this provision, apart from its obvious fairness, would rather tend to produce equality between competitors, than to justify the criticism of "unequal" taxation, or that the Act is designed to provide "convenient loopholes for the other nickel-copper companies operating in Ontario" to escape.

It remains to consider the complaint that the Mining Tax Act 1917 violates vested rights by statute that those of the petitioners lands (not specified) which were patented prior to May 4, 1891, are forever thereafter free from taxation. It is claimed "that this statutory assurance of freedom of taxation" is conferred by *The Mines Act* passed in 1892, (55 Vic. cap. 9) by a provision in these words (sec. 3 in part):—

"All royalties, taxes or duties which *by any patents* issued prior to the 4th day of May, 1891, *have been reserved, imposed or made payable upon* or in respect of ores and minerals extracted from the lands granted by such patents and lying within the Province, are hereby *repealed and abandoned*; and such lands, ores and minerals shall henceforth be exempt from every such royalty, tax or duty."

The same objection was urged against *The Mines Act* of 1900 (63 Vic. cap. 13) in the proceedings for disallowance already mentioned (*ante p. 37*) and it is evident from the correspondence between the two Governments that no weight was attached at the time, and when the events were recent, to the arguments that have been renewed seventeen years later and after the Mining Tax Act, to which they apply, has been in operation, without objection, for more than ten years. The undersigned does not conceive that he is now called upon by anything disclosed in the petition to defend or discuss the propriety or good faith of the legislation under these conditions. He desires, however, to point out that the clause will not bear the interpretation assumed by the petitioners that it assures all lands granted prior to May 1891 freedom from taxation by all subsequent legislatures. Its operation is clearly confined to royalties, taxes or duties reserved by patents issued prior to the specified date and which are thereby "repealed and abandoned"; and it is from *such* royalties, etc., so reserved that the lands are thereafter relieved. The few years preceding 1891 were marked by unusual activity in regard to the mining lands of Ontario, and the practice of the Department of Crown Lands as to the terms of their disposal was in course of adjustment. Patents of mineral lands were issued for a short period with special conditions, and no doubt patents had been issued prior to May 1891 which contained a reservation of royalties and payments in favour of the Crown on the minerals to be won from the lands thereby granted. Upon the imposition of a general royalty by the Act of 1892, the intent and effect of this provision was simply to clear the title to any such lands from all royalties and charges reserved against them by the patent by apt and comprehensive words of release. The language of the clause is explicit in that respect.

The undersigned would submit, with respect, that, even upon the far reaching construction pressed by the petition, the judgment of the legislature as to whether the public interest in the course of time and under changed conditions required a repeal of any such impediment to just and uniform taxation will not be brought under review by His Excellency's advisers.

The petition submits no reason for the alternative prayer that the question of the constitutional validity of the Act should be referred to the Supreme Court of Canada. It shows, on the contrary, that the contentions urged against its validity

are based upon allegations of facts which can only be determined by the regular procedure and practice of the Courts. It is not necessary to refer to the repeated pronouncements of Courts of last resort in favour of the determination of constitutional question, if possible, by concrete cases arising in the ordinary course of litigation as against their decision as academic questions in the abstract.

The undersigned respectfully submits that the legislation in question should be left to its operation without interference.

I. B. LUCAS.

March 23rd, 1918.

8 GEORGE V, 1918

(Approved 24 April, 1919.)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 19th April, 1919.

To His Excellency the Governor in Council:

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of Ontario, passed in the eighth year of His Majesty's reign (1918), and received by the Secretary of State for Canada on the 26th day of April last, and he is of the opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government.

Humbly submitted,

ARTHUR MEIGHEN,
Acting Minister of Justice.

MEMORANDUM FOR THE HONOURABLE THE ATTORNEY GENERAL:

Re the Legislative Assembly Extension Act, 1918 (Chap. 4).

Referring to your request for an opinion as to the constitutional validity of this Act—

Under section 92 of The British North America Act in each Province the Legislature may exclusively make laws in relation to

1. The amendment from time to time *notwithstanding anything in this Act* (The British North America Act) of the Constitution of the Province except as regards the office of Lieutenant Governor.

At Confederation, Canada (that is, what is now Ontario and Quebec), Nova Scotia and New Brunswick came into the Union on the 1st day of July, 1867, and the provision regarding the Legislative Assemblies of Ontario and Quebec (see British North America Act, section 85, which section is to be found under sub-head V, "Provincial Constitution") reads as follows:—

S5. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province) and no longer.

In the year 1881 the Quebec Legislature passed an Act—44-45 Victoria, Chapter 7, extending the duration of the Legislature of that Province from four to five years. The constitutionality of this Act has never been questioned, it is not even referred to in the Minister of Justice's report for that year, and the duration of sessions of the Quebec Legislature has been five years since the passing of this Act.

Nova Scotia and New Brunswick were dealt with by The British North America Act, section 98 which reads as follows:

"88. The constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act, and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

Nova Scotia continued to have four year Legislatures from Confederation until 1900 when by R.S.N.S. 1900 C.2. s. 9 the time was extended to five years.

New Brunswick (as had been the case before Confederation) continued to have four year Legislatures until 1902 when by 2 Edward VII. c. 1 the time was extended to five years.

In view of the manner in which the constitutions of the Provinces were adopted, namely by continuing the ones which they had at Confederation which depended on local statutes it seems reasonable to suppose that the provisions of section 92 sub-head 1 authorizing the Legislatures to amend their constitutions notwithstanding anything in The British North America Act, was intended to give and did give the fullest amending power.

It is not necessary to set out the manner in which Manitoba, British Columbia, Alberta or Saskatchewan all of which have Legislatures which last for five years have amended their Constitutions because they all came into Confederation in a way different from Ontario and Quebec and are therefore not useful as guides in the present instance.

With regard to the possible objection to The Legislative Assembly Extension Act, 1918, that while this Legislature has power to amend its Constitution it cannot provide for a Session of the Legislature lasting until an indefinite date while there are no decisions upon this point, yet so long as the Act extending the Legislature is regarded as a constitutional amendment (as it is) the terms of that amendment, may be such as the legislature within the scope of its authority sees fit to make, the Legislature within the limits of the power conferred by section 92 of The British North America Act having authority as "plenary and as ample * * * * as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits * * * the local Legislature is supreme and has the same authority as the Imperial Parliament. (See further Lefroy's Legislative Power in Canada p. 699 and Lefroy's Canada's Federal System p. 384).

We are therefore of opinion that in enacting The Legislative Assembly Extension Act, 1918, The Legislative Assembly of Ontario will be within its constitutional authority.

J. R. CARTWRIGHT.

EDWARD BAYLY.

TORONTO, May 9th, 1918.

DEAR SIR:

Re The Legislative Assembly Extension Act 1918

The opinion of the Deputy Attorney General and myself confirmed by the opinion of outside Counsel has been given to the effect that The Legislative Assembly Extension Act 1918 is within the constitutional powers of this Legislature but the Attorney General (as the validity of all legislation passed while this Legislature is sitting under the Act will be involved) considers it advisable to inquire whether you consider an application through the proper channels for confirmatory Imperial Legislation is desirable.

I have already sent you a copy of this Act and also a copy of the memo and opinion concurred in by Mr. Wallace Nesbitt which was given by Mr. Cartwright and myself but for convenience I enclose in bill form copy of the Act and also copy of the memo and opinion, to which a reference to—Ontario vs. Canada [1912] A.C. 571 see page 584 should be added.

I shall be glad to receive a reply to this letter at your early convenience.

Yours faithfully,

E. BAYLY.

E. L. NEWCOMBE, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ont.

DEPARTMENT OF JUSTICE, OTTAWA, June 13th, 1918.

June 13th, 1918.

Re The Legislative Extension Act, 1918

DEAR MR. BAYLY,—

I have your letter of 10th instant reminding me that I have not replied to your letter of 9th ultimo with regard to the Legislative Assembly Extension Act, 1918, and I am very sorry that this has been overlooked. Unfortunately your former letter was misplaced upon my files and did not come before me in ordinary course.

I have considered the question submitted and I see no reason to doubt the opinion signed by Mr. Cartwright and yourself copy of which you enclose. I do not think it necessary or advisable to submit this legislation for ratification by the Parliament of the United Kingdom. Obviously the Legislative Assembly Extension Act 1918 could not have been sanctioned by the Parliament of Canada, and certainly its provisions relate to matters connected with the internal government of the country, as to which, according to the deliberate view of the Judicial Committee of the Privy Council, expressed in several cases, comprehensive legislative authority is conferred, either upon the Dominion or the Provinces. I think the power of the province was adequate, and I think moreover that it would be inexpedient to suggest doubt as to the existing power of the provinces by submitting the measure for ratification.

Yours faithfully,

E. L. NEWCOMBE,

Deputy Minister of Justice.

E. BAYLY, Esq.,
Attorney General's Office,
Toronto, Ont.

9 GEORGE V, 1919

(Approved 22 May, 1920.)

DEPARTMENT OF JUSTICE, OTTAWA, 19th May, 1920.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Ontario, passed in the ninth year of His Majesty's reign (1919), and received by the Secretary of State for Canada on the 27th May, 1919, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

C. J. DOHERTY,

Minister of Justice.

10-11 GEORGE V, 1920

(Approved 27 June, 1921.)

DEPARTMENT OF JUSTICE, CANADA,

OTTAWA, June 1st, 1921.

To His Excellency the Governor General in Council:

The undersigned has under consideration the statutes of the Legislature of Ontario, passed in the 10th and 11th years of His Majesty's reign, 1920, and received by the Secretary of State for Canada on 2nd July last, and he is of opinion that these statutes may be left to such operation as they may have.

Representations have been made on behalf of Messrs. Hendrickson and Homegardner, citizens of the United States, by their solicitors, and also through the Department of State at Washington, against Chapter 91, entitled "An Act to amend the Beach Protection Act." This Act is cited as "The Beach Protection Amendment Act, 1920," and it provides in effect that no person shall within the territorial limits of Ontario take or carry away by water any sand, gravel or stone from the bed, beach, shore or waters of Lake Erie, Lake Ontario or Lake Huron, or from land covered by or bordering upon the waters of such lakes, or from any bar or flat in any of the said lakes, or adjoining any channel or entrance thereto, without license from the Lieutenant Governor in Council, unless the sand, gravel or stone be taken from a locality distant inland from high water mark of any of the said lakes; and moreover that no person shall without such license go upon any bed, beach, shore, water, bar or flat within the territorial limits of Ontario in any of the said lakes for the purpose of removing or assisting to remove any gravel, sand or stone therefrom; also that no person shall have on board his vessel, or on a vessel in his possession or control, any sand, gravel or stone taken contrary to the provisions of the Act with intent to carry the same away, and penalties are provided for contravention of these requirements. The Lieutenant Governor in Council is authorized to make regulations as to the terms and conditions upon which licenses may be granted, and as to the fees payable. It is declared that nothing in the Act shall apply to or affect any litigation now pending but that the same may be proceeded with and finally adjudicated upon in all respects as if the Act had not been passed.

It is represented on behalf of Messrs. Hendrickson and Homegardner that they became the owners in fee in 1909 of a water lot containing valuable sand deposits at Fishing Point, at the south end of Pelee Island in Lake Erie; that this water lot was granted by the Provincial Government in 1897 to Peregrine McCormick, who sold it to Cadwell and Fleming, residents of Windsor; that Fleming subsequently sold out his interest to Cadwell, who in turn sold to the said Hendrickson and Homegardner.

It is alleged that Hendrickson and Homegardner in addition to their original investment of \$30,000.00 for purchase of the lot have expended for boats and plant for the purpose of winning and marketing the sand about \$500,000, and moreover that various companies licensed by them have large investments dependent upon the obtaining of sand from this lot, and they had apparently removed a considerable quantity of the sand and were actively engaged in their operations when the statute in question came into effect.

The residents of Pelee Island, however, maintained that the removal of the sand was causing erosion of the shores of the island and the destruction of private property and municipal works to the injury of the inhabitants and of the community, and they accordingly proceeded upon relation of the Attorney General for an injunction to restrain the dredging operations. This action was tried before Mr. Justice Lennox, who delivered judgment on 14th February, 1920, in which he found that the proof failed to establish that the injuries or damage complained of was due to the operations of the defendants, or that these operations were likely or calculated to cause injury. The learned judge stated, however, that "whilst the plaintiffs have failed for want of proof their belief was not irrational and their attempt under the circumstances was not unreasonable, I do not think it is a case for awarding costs to the defendants"; therefore he dismissed the action without costs.

The plaintiffs appealed, but the Beach Protection Amendment Act, 1920, which was assented to on 4th June, had come into force before the appeal was heard. The dredging companies had applied for licenses thereunder and the Provincial Government had declined to issue licenses for the locality in question. Consequently upon the hearing of the appeal the court held that since by reason of the Beach Protection Amendment Act, 1920, no dredging operations were being carried on the case should not be considered at that time, but leave was reserved to the plaintiffs to proceed with the appeal at any time if the operations should be resumed, or if the Act should be repealed, and the case was accordingly adjourned *sine die*.

Upon reference to the Attorney General of Ontario of the papers submitted in support of the application for disallowance he submits a memorandum copy herewith, prepared jointly by his department and the Department of Mines of Ontario setting forth the situation from the point of view of the Provincial Government.

The case on behalf of Messrs. Hendrickson and Homegardner is perhaps best stated by the despatch of 19th March last from the Secretary of State of the United States to His Excellency the British Ambassador at Washington, copy submitted herewith.

It is represented, as will be perceived, that the proprietors of the water lot, by reason of the refusal of the Provincial Government to grant licenses are not permitted to exploit their properties, notwithstanding the findings of Mr. Justice Lennox and the opinions expressed by competent engineers to the effect that these operations are not injurious to the island, and emphasis is placed upon the hardship and loss to Messrs. Hendrickson and Homegardner having regard to the large amount which they have invested in the enterprise, and it is moreover suggested that the legislation in its effect or administration discriminates against American citizens.

It is however pointed out by the provincial memorandum that the Act applies equally to aliens and to British subjects, and that it is a mere incident of the operation of the Act that in its application to the locality in question the interests of American citizens are affected. It is stated by the memorandum that "the legislation is purely protective in character, and it is submitted that it comes squarely

within the jurisdiction of the legislature of Ontario. The fact that citizens of the United States, or companies formed in that country, own lands in Ontario, cannot be regarded as a reason for treating them in a preferential way as compared with Canadians or British subjects generally," and it is said on behalf of the Provincial Government that the same results would have followed if the persons directing or interested in the sand dredging had been British subjects.

Whatever may be the fact with regard to the efficient cause of the erosion and damages of which the inhabitants of Peelee Island complain, it must be observed that the trial judge, while finding that these were not attributable to the dredging, proceeded apparently upon the view that the plaintiffs had not satisfied the burden of fixing the responsibility, although they had satisfied him that they were not proceeding without reasonable cause and apprehension. The judgment as it stands is subject to review, but further consideration is withheld by the Court of Appeal because of the present operation of the Act in question. In these circumstances it seems pertinent to emphasize the following paragraph of the provincial memorandum:—

"The cessation of dredging operations at Fishing Point for more than a year, has afforded an opportunity for noting the effect on the island of the natural forces working without interference. The testimony of the Peelee Islanders is that the results strongly support their contentions. They represent that the bar at Fishing Point has begun to re-appear and the detritus of the shores is now finding a lodging place on the same, with every indication that the former degree of protection, which these bars afforded, will be restored if operations continue to be prohibited."

Therefore it cannot be said with certainty that the dredging is without effect to cause the damages of which the inhabitants complain, or that the Act in itself is an unjust or unreasonable exercise of the local powers. No question of navigation is suggested, and so long as the works do not affect navigation it cannot in the view of the undersigned be denied that the Act as claimed on behalf of the Province is within provincial authority. As to the administration of the Act Your Excellency's Government exercises no direction or control, but the undersigned does not doubt that the Government of the United States upon consideration of all the circumstances of the case will realize that the provincial authorities in the enactment of the general statute, and in withholding licenses in the particular case, were not influenced by any intention or desire to proceed arbitrarily or to deprive American citizens of rights which in the like circumstances would not similarly have been denied to Canadian nationals, and moreover the undersigned apprehends that the petitioners, as United States citizens holding Canadian titles, have no just cause of complaint because they are subjected to the local laws which affect aliens and British subjects alike.

The subject of property and civil rights in the Provinces is by the British North America Act 1867 committed to the exclusive legislative authority of the Provinces, and while there may be cases where unjust interference with vested rights or the obligation of contracts would afford ground for consideration as justifying the exercise of the power of disallowance, the undersigned apprehends that the case now presented is not of that character, and that, the legislature having acted within its appropriate sphere, there should be no executive interference unless it be clearly demonstrated that the legislation is bad in principle, a condition which in the view of the undersigned is not satisfied in the present case.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Ontario, for the information of his Government, and to Messrs. Tilley, Johnston, Thomson & Parmenter, Solicitors for Messrs. Hendrickson and Homegardner.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

Memorandum re Pelee Island

The Township of Pelee Island in the Province of Ontario, is situated in Lake Erie, on the Canadian side of the International boundary, and a few miles north of the same. It has an area of about 10,000 acres, and a population of 800 or 900. For municipal purposes it is included in the County of Essex.

Originally the greater part of the interior of the Island was occupied by several marshes of varying size, the lands being below the level of Lake Erie. At a very considerable expense, estimated at upwards of \$200,000, the township municipality drained these marshes, built dikes and installed pumping stations with the object of procuring and maintaining good cultivable conditions. The maintenance of the drainage systems and pumping stations entails a cost of thousands of dollars per annum, which is defrayed out of the proceeds of local taxation. The soil in these reclaimed areas is exceedingly fertile, and fine crops of tobacco, corn, grain, etc., are annually raised. It is a fair statement that the lands of Pelee Island in point of productiveness and value for agriculture, are not excelled by an equal area in any part of Ontario.

The natural protection of these lands from the waters of Lake Erie consists of banks of clay on the southwestern and eastern shores, of shelving banks of shaly limestone and of ridges of sand and gravel thrown up by the waves, on the southern and eastern sides. Along the clay banks on both shores of the Island and elsewhere, public roads have been opened and are in use for communication and transportation purposes. The situation of the Pelee Islanders resembles not a little that of the people of Holland, whose very existence depends upon keeping intact the dikes which protect their lands from the encroachments of the North Sea. The waters of the Detroit River, discharging into Lake Erie, set up currents which flow down the westerly and easterly shores of the Island, and especially under the impetus of high winds and occasional severe storms, erode the banks and ridges. This erosion varies in intensity from time to time depending upon the level of the waters in Lake Erie and the direction and velocity of the prevailing winds and currents; but the menace still remains. The security of the Pelee Islanders lies in the sufficiency and strength of the bulwarks with which Nature has provided them.

The extreme southerly part of Pelee Island, called Fishing Point, consists of a long tapering peninsula extending to the south. The currents flow down the easterly and westerly sides of the Island, meeting at Fishing Point, where they come to an equilibrium and deposit their burden of sand and gravel, part of which it is believed comes down with the Detroit River from the upper lakes, and part is derived from the shores of Pelee Island itself. In some such way, no doubt, the Point took its original form and shape. Interference by man with the natural conditions has brought about very material changes at the Point, as will be explained below.

The owner, or holder, of Fishing Point in 1897 was one Peregrine McCormick. McCormick applied to the Department of Crown Lands for the grant of a water lot on both sides of the Point, containing in all 222 acres, representing that he required the same in order to protect the shores of the Point from dredging operations by American vessels, which were in the habit of coming over and loading with sand and gravel without leave or remuneration and to the injury of his lands. The truth is, as was brought out in the action of Pelee Islands vs. Homegardner et al, hereafter referred to, and as was found by Honourable Mr. Justice Lennox in giving his decision in that case, that on the evidence of William Hendrickson, these representations of McCormick were "false and fraudulent," the grant in fact, having been applied for by McCormick to enable him to carry out an arrangement already tentatively entered into with the said Hendrickson, granting dredging rights when a patent should be obtained, and these were granted accordingly. The following is a quotation from the decision of Mr. Justice Lennox:

Fishing Point and the water-covered land adjoining it are composed of sand and gravel of very great commercial value. There was some sand and gravel dredged in the neighbourhood of Fishing Point and carried away before 1896, but it is not suggested that this caused injury to the Island or its inhabitants. The work began to be more extensively carried on after McCormick obtained the patent under a five-year lease granted by McCormick. From 1904 to 1909 there were two sets of operators at work. Mrs. Homegardner's husband acquired a title in fee in 1909. The defendant company claims under a lease or license from the Homegardner Estate or the deceased John Homegardner. In 1909 the quantity of material excavated greatly increased in volume and again in 1911, and vast quantities have since been annually carried away, including a considerable part of the southerly part of Fishing Point.

Operations continued until the end of 1919, a period of over twenty years, during which, especially in the later years of the period immense quantities of material were removed. Fishing Point being to a considerable extent dredged away, it no longer acted as a settling-ground for the sand and gravel brought down by the currents sweeping the shores of the Island. The erosion of the banks of the Island went steadily on and, it is alleged by the Islanders, at an increasing rate. The public roads on the clay banks kept falling in, and the township authorities were from time to time obliged to purchase from the adjoining owners, sufficient land to re-establish the same. The embankments provided by Nature were being destroyed; on several occasions heavy storms swept the water over them and carried it inland, occasioning much alarm and some damage. According to the Islanders, sand and gravel no longer settled along the south-western and south-eastern parts of the Island, but tended more and more to be swept out into the lake, to take the place of the material removed by dredging operations. Public feeling on the Island became very pronounced, the universal and fixed belief of the inhabitants being that their homes and farms were in danger of submersion by the waters of Lake Erie, if the excavations were allowed to go on. They petitioned the Government of the Dominion of Canada and the Government of the Province of Ontario to avert the calamity, which they were convinced was impending. The Government at Ottawa deemed the matter to be one not coming within its jurisdiction; the Government of Ontario referred the petitioners to the Law Courts, but gave its consent to be joined as a party, in order that the case might be fully tried. Accordingly an action—styled Attorney General ex. rel. the Corporation of the Township of Pelee and Others against Homegardner—was brought into the Supreme Court of Ontario to obtain an injunction restraining the defendants from removing sand and gravel from Fishing Point. The case came to trial before Honourable Mr. Justice Lennox and judgment was delivered 14th February, 1920. The plaintiffs' contentions as summarized by the Judge were:

- (1) that the sand banks and bars, while they remained, afforded a measure of protection to the shores of the Island.
- (2) that the operations complained of had caused the removal or destruction of these banks and bars.
- (3) that the restoration of the banks and bars could not begin until the basin created by the excavating operations was filled in.
- (4) that the restoration was made impossible because the defendants not only continued to enlarge the basin, but also to gather up and carry away the sand and gravel deposited in the basin from time to time as it collected there.

Much evidence was given on behalf of the plaintiffs in support of these contentions, and the Judge found that as matters of fact there had been "banks" or bars at the several places described, that they afforded considerable protection to the Island and its roads and works, and that they are gone." Further he was "satisfied that the

highways have been seriously damaged since the banks have been destroyed, and that this is at least partly owing to the changed conditions," also that the fact "as to the water invading the pumping stations was established and he was satisfied these works were seriously menaced."

Notwithstanding, however, the finding of the Judge that "the washing away of the banks and bars, the serious erosion of the shores, the destruction of the highways and the flooding of the pumping stations synchronized with the period of greatest activity in dredging operations" yet, in his opinion, it had not been shown that these effects were the consequences of the excavations complained of, it appearing that before these operations began, erosion of the shores and the cutting away of the banks, etc., not infrequently occurred. Although, His Lordship remarked, the plaintiffs had failed for want of proof, their belief, that their trouble was due to dredging done by the defendants, was not irrational, and their attempt to put a stop to the same under the circumstances was not unreasonable. Hence in dismissing the action, he did so without costs.

Concurrently with their bringing the above action-at-law, the Pelee Islanders renewed their representations to the Government of Ontario, and pressed for legislation which would give them the protection they desired. Accordingly, an Act to Amend the Beach Protection Act was introduced under Government auspices into the Legislature in the Session of 1920, and after reference to a Committee of the House, and careful consideration, was enacted. It may be referred to as Chapter 91 of the Statutes of Ontario, 10-11 George V, and is entitled The Beach Protection Amendment Act, 1920. It will be seen that it prohibits the taking or carrying away in any vessel, or otherwise transporting by water, any sand, gravel or stone from the bed, beach, shore or waters of Lake Erie, Lake Ontario or Lake Huron, without a license from His Honour the Lieutenant-Governor in Council.

It might be inferred from the tone of the correspondence from Washington, that the legislation is regarded as discriminatory in character, and directed against American citizens or companies as such. This, however, is not the case. The Act applied to aliens and British subjects alike. It is merely incidental that in its operation the Act affects the interests of American citizens. There is a market for Pelee sand and gravel in Sandusky, Cleveland and elsewhere on the southern shores of the Lake, but the effects on Pelee Island would have been the same if the sand and gravel had been removed by a Canadian company and carried to Canadian cities. The legislation is purely protective in character, and it is submitted that it comes squarely within the jurisdiction of the Legislature of Ontario. The fact that citizens of the United States, or companies formed in that country, own lands in Ontario, cannot be regarded as a reason for treating them in a preferential way as compared with Canadians or British subjects generally. Were the sand bars in question owned by John Doe and Richard Roe of Windsor, Ont., instead of by Homegardner and Hendrickson of Sandusky, Ohio, and were the excavations carried on by Doe and Roe of a kind to be not unreasonably regarded by Pelee Islanders as threatening their farms and even their lives, there can be no question at all that The Beach Protection Amendment Act, 1920, would be invoked against them. Whether or not the erosion of the shores went on anterior to the beginning of the operations of Homegardner and Hendrickson, it is the firm, and in view of the circumstances, the easily understood conviction of the inhabitants of Pelee Island, that such operations greatly aggravated and accentuated the erosion. While His Lordship Justice Lennox failed to find that the plaintiffs had established these operations as the cause of their troubles, it would probably have been quite as difficult, had the onus been on the defendants, for them to prove they were not the cause.

In its position as guardian of the rights of the property of the people of this Province, the Legislature deemed it wise to prohibit such operations, unless by special leave or license given after examination and knowledge obtained of all the facts, and it is urged that in so doing the action of the Legislature was justified by the facts and quite within its competence.

On the passing of The Beach Protection Amendment Act, 1920, the dredging companies applied for licenses to operate at Fishing Point. These, the Government declined to issue, but on representations by the companies that they would be exposed to serious losses should they be rendered unable to fulfil contracts they had made for the delivery of large quantities of sand and gravel, the Government gave them licenses instead at a point in Lake Erie, known as the Old Dummy Foundation, a short distance northeast of Pelee Island, where sand and gravel bars exist on property of the Crown. A nominal fee of \$10 per license only was imposed, the usual royalty charges per cubic yard being, under the circumstances, remitted.

The cessation of dredging operations at Fishing Point for more than a year, has afforded an opportunity for noting the effect on the Island of the natural forces working without interference. The testimony of the Pelee Islanders is that the results strongly support their contentions. They represent that the bar at Fishing Point has begun to reappear and the detritus of the shores is now finding a lodging place on the same, with every indication that the former degree of protection, which these bars afforded, will be restored if operations continue to be prohibited.

The case of Pelee Island against Homegardner was taken in appeal to the Appellate Division of the Supreme Court of Ontario, and came up before the Court on 8th February, 1921. The Court held that since by reason of The Beach Protection Amendment Act, 1920, no dredging operations were being carried on, the appeal should not be dealt with at the present time, but leave was reserved to the plaintiffs to proceed with the same at any time should there be a resumption of operations, or a repeal of the said Act. The case was accordingly adjourned *sine die*.

With reference to an allusion in the despatch from the Secretary of State at Washington, to other American companies having similarly been obliged to cease dredging in another locality in Lake Erie, it may be stated that the allusion is doubtless to the taking of sand and gravel from a bar known as the Cadwell bar off Point Pelee, a peninsula extending southward into the lake from the township of Mersea, in the County of Essex. Here, a bar was a number of years ago granted by the Crown to one, Cadwell, who, or whose successors in title, had given the right to certain American companies to remove sand and gravel, for supplying the markets in the lake ports on the United States side. Erosion of the shores of Point Pelee has also been going on, and complaints were made, as at Pelee Island, that this was due to excavating on the bar in the lake. Stoppage of these operations, however, was only temporary; the vessels were permitted to resume dredging under the authority of licenses issued under The Beach Protection Amendment Act, 1920, and continued to operate until the close of the season of 1920. The circumstances here resembled those at Pelee Island and the fact that these companies had also entered into large contracts for delivering sand and gravel, weighed with the Government in permitting the excavations, at any rate during the remainder of the year. In this case the owner, or owners of the bar are of British nationality, residing at Windsor. Had it been thoroughly established that the operations off Point Pelee caused, or largely contributed to, the serious erosion of the shores of Point Pelee, and had the inhabitants there been subjected to like anxiety and risk as on Pelee Island, the fact that it was a Canadian who owned the bar would not have been an obstacle to the Government in the fulfillment of its obligations.

It is elementary to the duty of a Government to protect the lands and homes of its people. The object of The Beach Protection Act, 1920, is to afford such protection, and it is submitted that the action of the Legislature and Government throughout has not only been consistent with its duty, but that in administering the law every consideration has been shown to the private interests involved, regardless of citizenship or nationality.

The following are attached hereto:—

1. Copy of The Beach Protection Amendment Act, 1920.
2. Copy of the Judgment of the Honourable Mr. Justice Lennox in the case of

Pelee Island vs. Homegardner.

3. Copy of map of Pelee Island by A. Wilkinson, P.S.L., 1866, showing location of marshes, pumping stations, roads, etc.
4. Plan of Fishing Point, showing shortening of same from 1896 to 1916.

Toronto, February 26th, 1921.

H. C. D.

The Attorney General
Ex. rel. The Corporation
of the Township of Pelee
and others.

v.

HOMEGARDNER.

COPY of Judgment of Lennox J. delivered February 14th, 1920. H. S. White, for the Attorney General. McKay, K.C., and J. G. Kerr, for the Township of Pelee and Vanderdasson and Pierce. Nesbitt, K.C., Fleming, K.C., and A. J. Thomson, for the defendants.

The Township of Pelee is comprised of Pelee Island in Lake Erie, an area of about 10,000 acres; of this 6,000 acres had to be reclaimed by dyking, drainage works and pumping stations under the provisions of the Ontario Drainage Acts, at a cost of \$200,000, or more.

The municipality as in duty bound, and as required by law has established, opened up and improved highways on the island, including highways or roads at various places along and in the neighbourhood of the lake shore, and, of course, at a heavy expenditure of money and labour. Until recently the beach along the east side of the island afforded exceptional advantages and facilities for driving and other road purposes, and as a place of resort and recreation. This was true of the beach of other parts of the island as well, particularly along the south shore. Until quite recently a long narrow point of land extended southerly from the south shore, known as "Fishing Point." In or about 1897 one Peregrine McCormick, who was then the owner of Fishing Point, applied to and obtained a grant from the Crown of the lands covered by water adjoining and east, west and south of Fishing Point, in all 222 acres, upon the representation that it was necessary that he should have it to enable him to protect his property by preventing sand dredging operations within the area applied for and obtained. This, upon the evidence of William Hendrickson, was a false and fraudulent representation, for the grant was in fact applied for to enable McCormick to carry out an arrangement already tentatively entered into granting dredging rights when the patent was obtained, and they were granted accordingly.

The defendants are successors in title to Peregrine McCormick of both Fishing Point and the adjoining 220 acres covered by water.

Fishing Point and the water covered land adjoining it are composed of sand and gravel of very great commercial value. There was some sand and gravel dredged in the neighbourhood of Fishing Point and carried away before 1896, but it is not suggested that this caused injury to the Island or its inhabitants. The work began to be more extensively carried on after McCormick obtained the patent, under a five year lease granted by McCormick. From 1904 to 1909 there were two sets of operators at work. Mrs. Homegardner's husband acquired a title in fee in 1909. The defendant company claims under a lease or license from the Homegardner estate, or the deceased John Homegardner. In 1909 the quantity of material excavated greatly increased in volume, and again in 1911; and vast quantities have since been annually carried away, including a considerable part of the southerly part of Fishing Point.

The plaintiffs allege that the operations of the defendants referred to have "resulted in the creation of a deep basin in the bed of Lake Erie immediately adjoining the south shores of the island many acres in extent and varying in depth from 8 to 15 feet and even 18 feet in depth, where formerly there existed natural banks and deposits of sand and gravel varying in elevation from two to three feet above the water level to two or three feet below the water level" and that "by means of this basin the defendants with the aid of the natural forces supplied by the wind and by the waters of the lake have attracted and drawn the sand and gravel banks and deposits, which formerly lay along and out from the west, south and east shores of the island and which afforded that natural protection to the shores of the island and particularly to the lands and works of the plaintiffs above described, away from the said shores and have shifted them to and gathered and accumulated them into the said basin and from there have dredged and excavated them and carried them away from time to time and are continuing to do so.....to the destruction of the natural right of protection," &c.....

The plaintiffs claim that "the effect of these operations is not only to take away and remove the said sand and gravel from the shores of the island but also by maintaining the said basin and by continually increasing the extent and depth of the same as the defendants are doing to prevent any accumulation of sand and gravel along the shores of the island or any restoration of the natural protection which the forces of nature would make if the said basin were allowed to fill in....."

The action was tried at Sandwich beginning on the 2nd of November last and after occupying several days was adjourned for argument and was very fully argued at Osgoode Hall, on Thursday last, the 5th of February instant. The plaintiffs ask for an injunction and a reference as to damages.

The action is of exceptional importance and far reaching consequences. I have quoted pretty fully from the statement of claims as it very clearly sets out the plaintiffs' contention, namely:—

- (1) That the sand banks and bars while they remained afforded a measure of protection to the shores of the island.
- (2) That the operations referred to have caused the removal or destruction of these banks and bars.
- (3) That the restoration of the banks and bars cannot begin until the basin is filled in, and
- (4) That the restoration is made impossible because the defendants not only continue to enlarge the basin but also gather up and carry away the sand and gravel deposited in the basin from time to time as it collects.

Mr. McKay referred me to authorities to show that the defendants' acts constitute an actionable wrong. I have no doubt that it is so, if it is the cause of the damage or injury. The decision must turn purely upon questions of fact including inferences, of course, and up to a certain point the way of the plaintiffs is plain. I regard the witnesses as to facts as trustworthy, honest men. Mr. Baird, the township engineer, is an exceptionally fine type of man, honest and capable, and I accept his measurements and soundings without hesitation, and his evidence generally. In a sense it is true that the observations of the witnesses as to the existence and subsequent disappearance of the sand banks and bars were "casual," as Mr. Nesbitt said. They would have been more minute and circumstantial if the witnesses had been planning and hoping for a law suit, but, none the less I have confidence in what these witnesses deposed to. I find that there were banks or bars at the several places described, that they afforded considerable protection to the island and its roads and works, and that they are gone.

I am satisfied that the highways have been seriously damaged since the banks have been destroyed, and that this is at least partly owing to these changed conditions.

I think that the evidence as to the water invading the pumping stations is established, and I am satisfied that these works are seriously menaced, but—with all this—the question remains:—Are the injuries complained of attributable to the acts of the defendants? There is in fact no other matter of serious conflict. The onus is upon the plaintiffs. To establish the cause of action they rely upon two classes of evidence, namely (A) circumstantial evidence, and (B) opinion evidence; and whether singly or combined, if the plaintiffs succeed, the result is based upon inference.

As to the expert or skilled witnesses it is enough to say that what they deposed to and what they argued fell far short of convincing me that the dredging operations caused the destruction of the sand banks or bars.

And as to circumstantial evidence, it always resolves itself into a question of interpretation. If the meaning of the circumstances is clear—if they can only have one meaning there can be no better evidence: “circumstances and presumptions naturally and necessarily arising out of a given fact cannot lie”: *Montenoy, B.*, in *Annesly v. Lord Anglesea*, 9 St. Trials 426. Even in criminal cases men are often, and I think quite properly convicted of serious offences on circumstantial evidence alone, but I think it will be conceded, not “quite properly convicted,” if the circumstances are as consistent with innocence as guilt. What are the circumstances invoked in proof or confirmation of the plaintiffs’ claim? Mr. McKay certainly made all that could be made of the argument that the washing away of the banks and bars, the serious erosion of the shores, the destruction of the highways and the flooding of the pumping stations, all synchronize, as he said, with the period of greatest activity in dredging operations: and I think this cannot be controverted. This is all right as far as it goes, but does it close in and connect, and alone, or aided by the opinion evidence, constitute reasonable proof—does it show cause and consequence, or only coincidence? All this as presumptive evidence, may be strong or weak, may mean a great deal or may practically amount to nothing. If the like never happened before, or cannot be accounted for in any other way, it might be regarded as sufficient proof. I need not decide as to this—the question does not arise. It is claimed for the defence that the flooding is accounted for by an exceptional storm, and that the erosion is attributable to the exceptionally high level of the lake during the period referred to. I need not dwell upon this: there are more obvious answers. It is reasonable to infer that the island had a prehistoric existence—but it is not shown, and I cannot infer, that the banks or shoals always existed; nor is it shown that they have not shifted or disappeared on other occasions—even within the memory of the older inhabitants—in other words, the plaintiffs fail in the process of elimination—and, unfortunately for them it is shown that the erosion of the shore, the cutting away of the banks, the destruction of the highways, and the consequent re-establishment of them further back, were things of frequent occurrence long before the date of the operations complained of, as witness the records of the Municipal Council, the witnesses at the trial and the establishment of protective works on the west side of the island.

There is lots of room for suggestion, and argument and possibility, but I am of the opinion that the plaintiffs have distinctly fallen short of proving that the works or operations of the defendants caused the injuries or damage complained of, or that they are likely or calculated to cause injury.

It is said that the defendants are innocent purchasers for value without notice. This may be. There is a fairly close connection, however, between the parties who bargained with McCormick, contingently upon his obtaining the grant, and the defendants—Mr. Hendrickson is President of the defendant company. It does not appear to me to be improbable that the man who dealt with McCormick in 1896 had an inkling of his proposed method of procedure.

Whilst the plaintiffs have failed for want of proof their belief was not irrational, and their attempt, under the circumstances, was not unreasonable. I do not think it is a case for awarding costs to the defendants.

The action will be dismissed without costs. I will not fetter the right of appeal by annexing a condition.

The island is not very readily accessible. There will be a stay for twenty days.

DEPARTMENT OF STATE,
WASHINGTON.

March 19, 1921.

Excellency:

I have the honour to refer to your note No. 135 of February 15, 1921, and to previous correspondence between the Embassy and the Department regarding the suppression by the Provincial authorities of Ontario of the operations by Messrs. Hendrickson and Homegardner, American citizens, in the removal of sand and gravel from land owned by them on Pelee Island, Lake Erie. The facts in the case were set forth in the Department's note to you of August 7 last.

As was observed in that note the opposition to the enterprise conducted by Messrs. Hendrickson and Homegardner seems to have come from certain residents of Pelee Island who maintained that the removal of the sand and gravel was causing erosion of the shores of the Island at different places to the injury of residents of those vicinities. It appears that despite the fact that the contention of these persons had been disproved by several investigations made by competent engineers of the Dominion and Provincial Governments and by a Judicial decision in the case of the Township of Pelee et al. against Homegardner wherein plaintiffs had sought to enjoin continuance of the operations conducted by Messrs. Hendrickson and Homegardner, the Legislative Assembly of the Province of Ontario passed a bill in May 1920 prohibiting further removal of sand and gravel without a license first had and obtained from the Lieutenant Governor in Council.

In your note No. 12 of January 6, 1921, transmitting a copy of a communication addressed by the Lieutenant Governor of Ontario to the Secretary of State at Ottawa, you suggested that since the case of the Township of Pelee et al. against Mr. Homegardner referred to above had been appealed to and was being considered in the Appellate Division of the Supreme Court of Ontario, further consideration of the matter should await the decision of the court. The Department was pleased to acquiesce in that suggestion. I am now informed, however, that on motion of the plaintiffs in this case the court, by an order entered March 3, 1921, dismissed the appeal on the ground that since by the statute referred to above (enacted subsequent to the appeal of the case) the acts complained of by the plaintiffs and against which an injunction had been sought were now forbidden, except when authorized by a license, and since there was no indication that the acts would be repeated, no decision by the court was necessary. A copy of the order is herewith enclosed for your further information.

I am further advised that in response to an application made to the Provincial authorities by the American interests, through their attorneys Messrs. King, Ramsey, Flynn and Pyle for a license to remove sand from their property the Deputy Minister of Mines stated in a letter of March 9, 1921, that his Department was not disposed to issue such a license. It further appears that a similar request made by these American interests soon after the enactment of the above mentioned law was likewise refused. It therefore seems obvious that notwithstanding the expert opinion expressed by competent engineers and judicial decree to the effect that the operations of these American citizens have not been responsible for erosion of the shores of Pelee Island they are not to be permitted to exploit their properties.

It has been represented to the Department that the property referred to was acquired solely for commercial purposes i.e., for use in building and construction

operations and is not suited to and cannot be used for other purposes; that relying upon their apparent right to remove the sand and gravel, which operations it is stated had been going on for several years without interference, large investments of more than half a million dollars in capital and equipment have been made which are now threatened with great loss unless some change in the attitude of the Provincial authorities is brought about. I cannot believe that it is the intention of the Canadian authorities arbitrarily to deprive American citizens of vested rights lawfully acquired nor to subject them to undue hardship by the suppressing of a useful enterprise.

I am told that the Government of the Dominion has authority to disallow Provincial legislation within a year from the date of its enactment, and that the time within which such authority may be exercised in this case will soon expire. In view of the circumstances thus briefly indicated I hope that the Canadian Government may see its way clear to take some action which will result in a settlement mutually satisfactory to all concerned.

Accept, Excellency, the renewed assurances of my highest consideration.

CHARLES E. HUGHES.

His Excellency
The Right Honourable
Sir Auckland Geddes, K.C.B.,
Ambassador of Great Britain.

QUEBEC

59th VICTORIA, 1896

5TH SESSION—8TH LEGISLATURE.

(Approved 27 November, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of Quebec in the fifty-ninth year of Her Majesty's reign (1896), received from the Secretary of State for Canada on the 21st of March last, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 9, 73 and 74, which are the subjects of a separate report.

The undersigned recommends that if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 30 November, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon the following Acts of the Province of Quebec, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 21st of December, 1895, and received by the Secretary of State for Canada on the 21st of March last.

Chapter 9. "An Act respecting the Election of Members of the Legislative Assembly of Quebec."

Section 311 enacts that every person shall be liable to a penalty, not exceeding \$2,000 and imprisonment for twelve months in default of payment, who illegally or maliciously, either by violence or stealth takes from any officer or person having the lawful custody thereof, or from the place in which they have been deposited, any ballot box, list of electors or other document or paper prepared in conformity with this Act or who illegally or maliciously destroys, injures or obliterates them, or who makes or causes to be made any erasure, addition, or interpolation of names in any such documents or papers, or aids or abets in these things being done.

Those provisions, or some of them, relate to offences which are already punishable under the Criminal Code, 1892. The constitutionality of such provisions by a Provincial Legislature is on that account open to consideration and doubt, but the undersigned does not recommend that the Act containing them should be disallowed.

Chapter 73. "An Act to incorporate the Drummondville Hydraulic and Manufacturing Company."

Section 2 authorizes the Company to construct dams along the rapids of and across the River Saint Francis, and to conduct water therefrom by canals or flumes, to construct locks, piers and other works on the river, enter upon and take possession of the bed and beach of the said river at the entrance of the canals or flumes, and otherwise to occupy the bed of the river and construct works therein.

Chapter 74. "An Act to incorporate the Coulonge and Crow River Boom Company, Limited."

Section 6 authorizes the Company, upon payment of compensation to any one injured or affected thereby, to construct or maintain booms, dams, slides, piers, wharves, or other works necessary to facilitate the transmission of timber in the Coulonge and Crow Rivers, and to blast and remove shoals and other impediments and otherwise improve the navigation and floatibility of the said waters.

It has been pointed out on several occasions by preceding Ministers of Justice in their reports upon the legislation of the various Provinces that provisions similar to the above are objectionable in so far as they relate to rivers which are claimed on behalf of the Dominion to have become the property of the Dominion under the British North America Act. The objection has also been made that it is not within Provincial authority to authorize the construction of works in navigable water.

The Supreme Court of Canada has recently given its opinion upon certain questions referred to that Court for determination by Your Excellency in Council. Some of the questions involve the respective legislative authority of the Dominion and the Provinces with regard to rivers and navigable waters. Your Excellency's Government intend to have these questions submitted to the Judicial Committee of Her Majesty's Privy Council upon appeal, and pending their final determination there, the undersigned considers that it would not be proper to disallow either of the Statutes containing these questionable provisions.

The undersigned recommends, therefore, that none of the Statutes mentioned in this report be disallowed.

The undersigned further recommends that if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted.

O. MOWAT,
Minister of Justice.

60th VICTORIA, 1897

6TH SESSION—8TH LEGISLATURE

(Approved 3 September, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 25th August, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Statutes of the Province of Quebec, passed in the Sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State for Canada on the twenty-first day of January, 1897, and he is of opinion that they may be left to their operation without any observations, except Chapters 62, 77, 79 and Chapter 48. With regard to the last-named Statute, the undersigned observes that it provides for bringing into effect, by means of a proclamation of the Lieutenant Governor, a code of civil procedure of Lower

Canada, which has been drafted by Commissioners appointed for that purpose. The objection, if any, to this enactment will depend upon a consideration of the provisions of the Code to which it refers, which has not been printed with the Statute, or submitted to the undersigned. The undersigned will, therefore, withhold any further report upon this Statute until he has had an opportunity of considering the provisions of the Code to which it refers.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 15 November, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 9th September, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the following Statutes of the Province of Quebec, passed in the Sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State for Canada on the twenty-first day of January, 1897:—

Chapter 62. "An Act to amend and consolidate the Acts respecting the Incorporation of the City of St. Henri."

By Section 286 the Council is empowered to make By-laws with reference to a number of subjects enumerated in the sections which follow, among others, to provide for the arrest and punishment of keepers and inmates of houses of ill-fame and gambling-houses, and of vagrants. These are subjects which concern the criminal law, and in respect of which criminal legislation has been enacted by Parliament. The authority of a Provincial Legislature to enact provisions covering the same ground is, therefore, at least doubtful. The undersigned does not consider, however, that on that account the Statute should be disallowed, seeing that if the provision referred to is *ultra vires*, the Courts would not give effect to it, and no harm will be done, so far as the undersigned is aware, from such enactment being on the Statute-book meantime.

Chapter 77. "An Act to incorporate the North Shore Power Company."

Sections 6 and 7 profess to authorize the construction of works upon or over water-courses and water-ways in the District of Three Rivers.

Chapter 79. "An Act to incorporate the Coaticook Electric Light and Power Company."

Sections 6 and 7 contain similar provisions with reference to the Construction of works upon or over water-courses and streams for the purposes of the Company.

Attention has heretofore been called to similar enactments upon the ground that Provincial legislative authority is doubtful in respect of rivers and other waters, exclusive authority over which is claimed on the part of the Dominion. It is probable that these claims of conflicting jurisdiction will shortly be settled by the judgment of the Judicial Committee of the Privy Council, and the undersigned does not feel called upon to do more now than reiterate the objection heretofore stated.

The undersigned recommends that the Statutes mentioned in this report be not disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 20 October, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 14th October, 1897.

To His Excellency the Governor General in Council:

The undersigned, referring to his previous report, approved by Your Excellency in Council on the 3rd of September last, relating to the Statutes of the Province of Quebec for the year 1897—which were received by the Secretary of State for Canada on the 21st January, 1897,—has the honour to report that, having examined the Code of Civil Procedure of Lower Canada, referred to in Chapter Forty-eight of the above-mentioned Statutes, intituled, “An Act respecting the Code of Civil Procedure of the Province of Quebec,” he is of opinion that the Statute in question may be left to its operation without further observations, and he recommends accordingly.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

61st VICTORIA, 1898

1ST SESSION—9TH LEGISLATURE

(Approved 9 September, 1898)

DEPARTMENT OF JUSTICE, OTTAWA, 27th August, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Quebec, passed in the Sixty-first year of Her Majesty's reign (1898), assented to on 15th January, 1898, and received by the Secretary of State for Canada on 26th February, 1898, and he considers that these Statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

62nd VICTORIA, 1899

2ND SESSION—9TH LEGISLATURE

(Approved 18 November, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 11th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of the province of Quebec, passed in the sixty-second year of Her Majesty's reign (1899), and received by the Secretary of State on 23rd March last.

The undersigned calls special attention to the following of these statutes:—

Chapter 23. "An Act respecting Fisheries and Fishing."

Some of the provisions of this statute seem to constitute regulations respecting the mode or manner of fishing, or the protection of fisheries, rather than relating to the property in them; or the disposition thereof, or taxation.

The undersigned refers particularly to paragraphs 1375 and 1394H to 1394K, inclusive of section 1. It may be, however, that these provisions can be properly construed as affecting matters competent to the provincial legislature, and of course, in so far as they may in their terms have any application beyond that, the courts would hold them inoperative. It seems to be the general intention of the Act to affect only those matters which have been held to fall within provincial jurisdiction, and the undersigned does not anticipate that any harm will come from leaving the statute to its operation.

Chapter 43. "An Act to amend the law respecting railways, with reference to the payment of certain debts incurred in their construction and to the sale of such railways in certain cases."

This Act provides as to railway companies subsidized by the province, that in certain cases it shall be lawful for the Lieutenant Governor in Council upon the report of the Railway Committee of the Executive Council, to authorize the Commissioner of Public Works to cause the railway and roadbed and all the rolling stock and equipment thereof to be sequestered or sold. One of the events upon which these proceedings may be had is the insolvency of the company. The statute proceeds to enact the procedure consequent upon such order.

It is of course clear in the first place that this Act can have no application to railways incorporated by the parliament of Canada or which have been declared by parliament to be for the general advantage of Canada, but assuming, as is probably the case, that the Act is not intended to apply to any such company, it is, in the opinion of the undersigned, clearly incompetent to a provincial legislature to provide for the sequestration or sale of a company's property, or the winding-up of the affairs of the company by reason of the company's insolvency. The subject of bankruptcy and insolvency is specially enumerated as one within the exclusive authority of parliament, and it is undoubted that subjects within the exclusive authority of parliament are not within the authority of a legislature. It is of course competent to the courts to give effect to this objection, but the undersigned recommends that the matter be called specially to the attention of the government of the province so that a proper amendment may be passed at the next session of the legislature to limit the operation of this statute to matters which are within provincial jurisdiction.

The undersigned sees no reason to comment upon any of the other statutes.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

63rd VICTORIA, 1900

3RD SESSION—9TH LEGISLATURE

(Approved 29 November, 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 26th November, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Quebec, passed in the sixty-third year of Her Majesty's reign (1900), and received by

the Secretary of State for Canada on 12th April and May 26th, 1900, and he is of opinion that these statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

1 EDWARD VII, 1901

1ST SESSION, 10TH LEGISLATURE

(Approved 27 June, 1901)

DEPARTMENT OF JUSTICE, OTTAWA, 8th June, 1901.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a petition addressed to Your Excellency by the Honourable Guillaume Alphonse Nantel, of the city of Montreal, dated 4th ultimo, also copy of another petition addressed to Your Excellency from Charles Sweeney, Esquire, and other electors of the province of Quebec, in both of which the petitioners complain of an Act passed at the last session of the Legislature of Quebec, being chapter 7, intituled "An Act to amend the Quebec Controverted Elections Act," assented to on 28th March, 1901, and received by the Secretary of State for Canada on 17th April, 1901.

The petitioners pray for disallowance of the Act in question upon the grounds set forth in the petition, copies of which are submitted herewith.

The undersigned, considering the grounds alleged by the petitions, is of opinion that the legislation in question is *intra vires* and that being so, while not approving of the legislation, he apprehends that it is not a case in which Your Excellency should exercise the power of disallowance. He recommends, therefore, that the Act be left to its operation and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his government, and also to each of the petitioners.

Humbly submitted,

R. W. SCOTT,

Acting Minister of Justice.

Translation

To His Excellency the Right Honourable Sir Gilbert John Elliot Murray-Kynynmond, Earl of Minto and Viscount Melgund of Melgund, County of Forfar, in the part of the United Kingdom, Baron Minto of Minto, County of Roxburg, in the peerage of Great Britain, Baronet of Nova Scotia; Governor General of Canada.

The Petition of Guillaume Alphonse Nantel, Barrister, journalist, former Commissioner of Public Works, of the City of Montreal,

RESPECTFULLY SUBMITS:

That he is a British subject and entitled to the protection of the laws of the country, more especially the laws of the Province of Quebec where he resides;

That he has been a candidate at the election held on the seventh of December, 1900, in the electoral district of Terrebonne, Judicial District of Terrebonne, upon

the renewal by general election, of the Legislative Assembly of the Province of Quebec;

That his opponent, F. J. B. Prévost, barrister of the town of St. Jérôme, upon the counting of the ballot papers by the Returning Officer, was declared elected by a majority of 56 votes;

That upon and after the recount of said ballot papers by the Honourable Justice Henri Taschereau, of the Superior Court of the Province of Quebec, the said Prévost was declared elected by twenty votes, numerous errors having been discovered which, in pursuance of the statute, could be taken into account by the Honourable judge, and many additional errors also, during said recount were being discovered, of which account could be taken only in the course of proceedings of a contestation or petition of election duly instituted and proceeded with;

That in fact the Petitioner, without taking into consideration the ballots unlawfully and fraudulently given as a result of the practices of the said F. J. B. Prévost personally and of his agents, has reason to believe that he has obtained, at the said election, the actual, lawful and free majority of the votes registered at the different polls when said election was held, which said majority should be increased by as many votes as have been given to the said Prévost as a result of his electoral practices and those of his agents;

That upon such conviction, the Petitioner, as was his right, has attacked the election of the said Prévost by way of petition or contestation, setting forth all the acts of corrupt practices, unlawfulness and corruption which came to his knowledge and which he conscientiously believes have been deliberately carried on by the said Prévost personally and by his agents with the decided intention of corrupting the vote of a great number of voters in the said electoral district, of viciating the popular suffrage and win, as in fact he has apparently won the said election through corrupt practices, unlawfulness and corruption;

That copy of said petition is fyled herewith for reference;

That the said petition has been instituted within the lapse of time required by the law of the country, that is: "The Quebec controverted Elections Act," sec. 464, and following, of the Quebec Revised Statutes, 1888; that it was fyled on the 28th day of January, 1901, and that there has been joinder of issue on said petition by the production of preliminary objections as required by section 499 of said Statutes;

That said petition was proceeded upon with all due diligence, and that if your Petitioner has not been able to commence trial on the merits it was on account of having been prevented so to do by two insurmountable obstacles, that is:

1°. The production of said preliminary objections which he had to dispose of before proceeding on the merits (sections 500 and 501 of said Statutes);

2°. The convocation of the Legislature in session for the 14th day of February, 1901, during which session the petitioner could not proceed—See section 756a introduced by the Act 52 Victoria, chapter 11;

That, moreover, Act 52 Victoria, chapter 11, sec. 1, gave the petitioner a delay of six months to proceed upon the trial of said petition, dating from the day of its presentation, that is from the 26th of January, 1901, the time of session not to be computed in the said six months. Refer to same section of Act 52 Vict., chap. 11, sec. 1;

That on March the 28th an Act entitled: "An Act to amend the Controverted Elections' Act" was sanctioned by His Honour the Lieutenant-Governor of the Province of Quebec which among other provisions sets forth: "The trial upon the merits of every election petition now pending as well as of any future petition, must have been commenced within the three months which followed the publication, under article 213 of the Quebec Election Act, 1895, in the Quebec *Official Gazette*, by the Clerk of the Crown in Chancery, of the notice of the election of the member, if not, such petition shall lapse absolutely, be preempted and become null and of no effect." Said Act is set forth *in extenso* in the judgment of Mr. Justice Taschereau of the 13th of April, copy of which is fyled with the present petition;

That immediately after the prorogation of the said session of the Quebec Legislature, your Petitioner has requested the Judge of the Superior Court for the District of Terrebonne to appoint a date for the hearing on the Defendant's preliminary objections, and on the 13th of April the Honourable Mr. Justice Taschereau overruled this motion, without costs, for the reasons mentioned in the judgment of which copy is filed in support of the present Petition;

That on the same day, thirteenth of April, the Defendant presented a motion under the Act sanctioned on the 28th of March then proceeding, to the effect of having said petition ordered to be declared lapsed, perempted, null and of no effect, and be consequently dismissed with costs:

That on April 20 the Honourable Mr. Justice Taschereau rendered judgment setting forth that the Court was "disseized, to all intents and purposes, of the said Petition of election, such petition being lapsed, pre-empted, null and of no effect by the very force of the law," as appears in like manner in said judgment of which copy is herewith filed;

That under the Act, 29 Vict., chap. 10, s. 14, the said F. J. B. Prévost could neither sit nor vote at the Legislative Assembly during the last session, unless he had previously, in presence of the Clerk of the Legislative Assembly, taken the following oath: "I swear that in the organization, the conduct and the holding of the election as a result of which I became a member of the Legislative Assembly of Quebec, I have not committed any electoral practice prohibited by the Election Act of Quebec, 1895, nor given my consent that such practice be committed by any of my agents or by whomsoever it may in my interest, nor have I participated personally in any such practice; that I have done nothing to delay the pending trial against me; that I have not engaged in, commenced nor entered upon any agreement or arrangement, directly or indirectly, under which the said petition of election should be discontinued, suspended or settled in any manner whatsoever, and the trial and hearing of said petition be carried on in the ordinary course of the law. And I have signed":

That under the same section, the Speaker should forthwith have transmitted to the Prothonotary of the Superior Court a report setting forth that said F. J. B. Prévost had taken the required oath, and that said report should form part of the record in the case;

That the said F. J. B. Prévost, although he has been sitting and voting during the last session of the Legislative Assembly of Quebec, has not given any such oath;

Your Petitioner humbly requests Your Excellency, the Governor General in Council, that the said Act be disallowed for the following reasons of public and private order:—

1°. The said Act deprives Your Petitioner of the right of contesting, by way of petition, an election voidable through falsity, unlawfulness and corruption.

Now, said right of petition against such an election has been considered, from time immemorial, as inherent and essential to parliamentary system for the guarantee of the liberty, the truthfulness and the sincerity of suffrage as well as for the guarantee of the independance of popular Chambers.

To enquire into the holding of election is one of the prerogatives of the Commons of which the latter have divested themselves, regretfully, to have them assumed, first by committees, and then by the Courts—not in order to put an end to election contestations, but to guarantee the carrying on thereof with more care and independence of the influences of the political parties.

2°. Because the said Act abolishes the action of Courts to substitute therefor the final decision of the Legislative power. The Legislature, in this case, renders a judgment, but does not enact a Law to be construed by judges of the Courts who are thoroughly informed by the evidence and the documents which constitute the record of the case.

Said Act creates an actual state of anarchy in so far as it shackles the proper judges and vest in the Legislative authorities a power of which they have divested

themselves, and which can be exercised only by information furnished through inquest and the production of papers, documents, etc., etc.

It deprives private individuals of one of those British liberties which are considered primordial, the liberty of appearing before the Courts established for the remedial of grievances which are all the more important that they involve political as well as private interests;

It is contrary to all principles of sound legislation for the following reasons:—

a. It sets aside a case pending before the Courts, and disposes of the same in an arbitrary manner without the hearing of witnesses and the production of documents at the inquest.

b. It casts aside, by its retroactive effect, the rights attributed to your Petitioner under laws existing at the time of said election and of the institution of the contestation thereof, without the least compensation whatever, which is contrary to all notion of equity and common law.

3°. It is immoral in so far as it absolves all cases of corruption which are charged against the Defendant Prévoist and his recognized agents; it rehabilitates them without a judgment from the Court, and it declares null and void any enquiry into electoral and corrupt practices charged against him and such agents. It casts aside, in like manner, at the end of a session, penalties incurred from the very beginning of such session by those members who have been declared elected but whose election was controverted and who should, prior to sitting and voting in Parliament, have given the oath prescribed by the Act 59, Vict. Chap. 10, sec. 14, as aforesaid.

4°. It is contrary to public order and to every notion of legislation in so far as it enacts a prescription of three months which became acquired in favour of the said F. J. B. Prévoist on the very day of the sanctioning of the Act, and causes the delays of prescription to be computed, not from the date of the presentation of the petition, as provided for by the Act, 52 Vict., Chap. 11, sec. 1, but from the day of the Proclamation of the member in the *Official Gazette*;

5°. That said Act has practically, towards the Petitioner, the effect of a private Bill of which notice has never been given, although he is affected in his personal property in so far as he will be compelled to pay his own costs, and although, through no fault of his own, he has incurred neither prescription, peremption nor forfeiture.

Wherefore Your Petitioner humbly requests Your Excellency to take his present Petition into consideration, and to disallow the Bill sanctioned on the 28th of March, 1901, by His Honour the Lieutenant Governor of the Province of Quebec, bearing No. 162 and entitled "An Act to amend the Controverted Elections' Act;" and that such disavowal be given within such a delay as to allow your Petitioner to proceed in the trial on said Petition, that is, within the delays provided for by the Act, 52 Vict., Chap. 11, S. 1.

And Your Petitioner shall not cease to pray.

G. A. NANTEL.

MONTREAL, May 4, 1901.

*To His Excellency the Right Honourable Sir Gilbert John Elliot, Earl of Minto,
Governor General of Canada.*

The undersigned petitioners, representing the sentiments of a large part of the electors of the Province of Quebec, have the honour to represent:

That the general elections in the said Province took place on the 7th day of December, 1900.

That they were held under the then existing laws, which prescribed the formalities to be observed in their enforcement and the penalties attached to their infringement.

That at said election the Honourable M. F. Hackett of Stanstead and Mr. M. B. Lovell were opposing candidates for representing the County of Stanstead in the Legislative Assembly of the said Province.

That at that election the said Lovell was declared elected.

That within the time prescribed by the laws of the said Province, his election was protested, and asked to be set aside on the grounds of unlawful and corrupt acts, by himself and through his agents.

That the petitioner (Mr. Charles Sweeney) of Hatley, in said County, used due diligence in the prosecution of the case; but was delayed and obstructed by the defendant who presented to the Court various objections and exceptions to the proceedings, which were argued before his honour Judge Lemieux, who after due consideration, which consumed some time, set aside the preliminary objections as unfounded in law.

Owing to this delay—for which the petitioner was not responsible—and the convocation of the Legislative Assembly—during the session of which the contestation had to be suspended in conformity with the law, Victoria 52, Chapter II, Article 576a, which provides that a member cannot be proceeded against while the Parliament to which he belongs is in session, made it impossible to complete the trial and obtain judgment within the time prescribed by the Act passed at the last session of the Legislature of the said Province of Quebec, which declares “Absolutely lapsed, pre-empted, null and of no effect all election petitions on trial upon merits which should have been recognized within three months following the publication in the official *Gazette* of the election.”

By the passing of this obnoxious Act in the very last days of the session, without notice, without discussion, and without giving the people an opportunity to express their sentiments of disapproval; is considered an indefensible Act degrading to the character of the Legislature which perpetrated it. The petition against the said Lovell's election has been dismissed by his honour Judge Lemieux, following the judgment of his honour Judge Taschereau in the Terrebonne County election protest, in which the Honourable G. A. Nantel was petitioner, not on the merits of the cases, but on account of the “Act” referred to, thus leaving the costs on the innocent petitioners, while those who were charged with the violation of the law go free.

The foregoing cases are cited in order to bring to Your Excellency's notice the result and the practical effect of the Act complained of.

Your petitioners therefore humbly approach Your Excellency and respectfully ask Your Excellency to exercise your prerogative rights and disallow the Act in question for the following amongst many good and sufficient reasons:

This “Act” practically deprives petitioners of the power to successfully prosecute and punish those guilty of fraudulent and corrupt acts in election matters.

The right to petition against those guilty of securing their election by unlawful and corrupt means, has been considered from time to time immemorial as inherent and essential to good and wholesome parliamentary government. This law deprives the people of one of their prerogative rights, i.e., to inquire into the way elections are carried, and to secure the punishment of the guilty. Your petitioners respectfully submit that Legislatures should not shield those guilty of corrupt acts, by preventing the contestation of elections; but should provide for their continuation, and make them as independent as possible from the influence of political parties.

This “Act” by its retroactive effect suppresses the action of the Courts, and substitutes legislative power in their place.

It is contrary to the principles of sound legislation.

It confines the time within unreasonable and impossible limits, suppresses and puts out of court, cases not concluded and which could not be concluded in the time prescribed; and without providing for any compensation to the petitioners for costs which have been incurred, and who had proceeded legally under the laws that existed, at the time the prosecution commenced, which is a violation of individual and personal rights, and contrary to all ideas of British justice.

Your petitioners would further submit that the Palladium of our rights and liberties is a pure *Ballot Box*, and that it is necessary to good order and government, to throw around it all possible safeguards, which will conduce to making it the exponent of the honest and patriotic sentiments of our people, uninfluenced by mercenary or political considerations or motives, on the part of designing men.

This Act removes the barriers and obstacles, calculated to restrain, and keep within due bounds, the unlawful tendencies of office seekers, who are governed more by personal, than by public considerations.

By the passing of this "Act" the standard of political morality will be lowered, the demoralization of the electorate will be increased, the will of loyal, honest and patriotic citizens will be thwarted; and the deterioration of the honour and respect for our legislatures will ensue.

Your petitioners therefore, humbly pray, that your Excellency will take the foregoing into consideration, and disallow the Act sanctioned by the Lieutenant Governor of the Province of Quebec; entitled "Law amending the law concerning contested elections." And that this disallowance be given in such a way as to permit the petitioners to proceed with their petitions under 52 Vict., Chapter 11, section 1.

And your petitioners as in duty bound will ever pray, etc., etc.

Chas. Sweeney, C. R. Jones, M.D., H. F. Pope,
J. D. Morrison, H. W. Perry, F. O. Webster,
W. H. St. Pierre, President E.T.C.
Association County of Stanstead-Coaticooke.
N. Verret, L. B. Murphy, S. R. Buckland,
A. H. Moore, M. T. Hackett.

STANSTEAD COUNTY, May 17, 1901.

MAGOG, May 22, 1901.

F. D. MONK, Esq., M.P.,
Ottawa, Canada.

We, the undersigned, have seen the copy of a petition to His Excellency the Governor General of Canada, asking (for various reasons) his disallowance of an Act passed by the Legislature of the Province of Quebec, at its last session entitled "An Act amending the law concerning contested elections."

Believing that Act to be unwise, unjust and a menace to the rights and liberties of the people, we desire to have our names appended to said petition. And we hereby authorize you to sign said petition for us.

E. H. GUILBERT, Mayor, Town of Magog.
N. C. GENDRON, Councillor, Town of Magog.
E. P. OLIVIER, Bank Manager of E. T. Bank.

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, December 31st, 1901.

These statutes were received by the Secretary of State for Canada on 17th April last.

Chapter 7, "An Act to amend the Quebec Controverted Elections Act," was the subject of a report to Your Excellency, dated 8th June last, by the then acting minister of Justice. The other statutes contained in this volume may be left to their operation without comment.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

2 EDWARD VII, 1902

2ND SESSION, 10TH LEGISLATURE

(Approved 12 December, 1902)

DEPARTMENT OF JUSTICE, November 24th, 1902.

These Acts were received by the Secretary of State for Canada on 9th April last. They may be left to their operation without comment.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

3 EDWARD VII, 1903

3RD SESSION, 10TH LEGISLATURE

(Approved 25 January, 1904)

DEPARTMENT OF JUSTICE, January 8th, 1904.

3 Edward VII—received by the Secretary of State for Canada on 13th May, 1903.

The undersigned sees no occasion at present to comment upon any of those statutes, except chapter 48, intituled: "An Act respecting the liquidation of non-commercial companies and corporations."

This Act provides that non-commercial joint stock corporations or companies, which have ceased payment, may be placed in liquidation on the application of any unsecured creditor. Such legislation appears to the undersigned to partake of the quality of bankruptcy and insolvency, and is for that reason objectionable. It would, however, be convenient for the courts to give effect to this point if raised by parties concerned, and the undersigned does not consider it necessary therefore to recommend disallowance.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

4 EDWARD VII, 1904

GOVERNMENT HOUSE, QUEBEC, 6th June, 1904.

SIR,—I have the honour to report to His Excellency the Governor General in Council that I have reserved, for the signification of His Excellency's pleasure, a Bill intituled: "An Act to amend article 599 of the Code of Civil Procedure."

My reason for reserving this Bill was that the words "or exercising their functions and offices in the province," which constitute the amendment to the existing law, might be construed as rendering liable to seizure the salaries of public officers appointed by the federal government and might be considered as an infringement on the legislative power of the Dominion Parliament.

I have the honour to be, sir,

Your obedient servant,

L. A. JETTE,

Lieutenant-Governor of the Province of Quebec.

The Honourable the Secretary of State,
Ottawa.

(Approved November 16, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, October 29th, 1904.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a Bill, No. 146, intituled "An Act to amend Article 599 of the Code of Civil Procedure," passed by the Legislative Council and Assembly of Quebec during the last session (1904), and reserved by the Lieutenant Governor of the province for Your Excellency's pleasure.

The Bill amends paragraph 9 of article 599 of the Code of Civil Procedure by striking out the first clause and substituting therefor the words "Salaries of public officers, with the exception of those of public officers whether permanent or not of the province (or exercising their functions and offices in the province) which are seizable for."

The Lieutenant Governor reports that his reason for reserving this Bill was that the words "or exercising their functions and offices in the province" which constitute the amendment to the existing law, might be construed as rendering liable to seizure the salaries of public officers appointed by the Federal Government, and might be considered as an infringement on the legislative power of the Dominion parliament.

The undersigned considers that the reasons stated by the Lieutenant Governor for reserving the Bill are such as to demonstrate that the Bill should not receive effect at the hands of Your Excellency's Government, and he recommends, therefore, that no action be taken on the said reserved Bill. He further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for his information.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 16 November, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last sessions of the legislatures thereof (1904), as follows:—

* * * * *

Quebec, 4 Edward VII.—received by the Secretary of State on 15th June, 1904.

These statutes may be left to their operation without comment, except:—

Chapter 93, intituled “An Act respecting the Toronto General Trusts Corporation,” by which the corporation, being a body corporate under the laws of the province of Ontario, and having its head office in the city of Toronto, is authorized to carry on business in the province of Quebec. Further powers are also conferred upon the corporation.

This Act is, in the opinion of the undersigned, objectionable for reasons which have been heretofore stated.

The undersigned is not prepared to admit that a local legislature, in the execution of its authority to incorporate companies with provincial objects, or in the execution of any other authority, can confer upon a company incorporated by another province, powers which, if in terms conferred by the incorporating province, would not fall within the description of provincial objects. Upon former occasions it has been deemed sufficient to call attention to objections of this character leaving them for the determination of the courts when they arise, and the undersigned considers that the public interest will be served by following the same course in the present case.

* * * * *

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province, shall be communicated to the Lieutenant Governor of the province.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

5 EDWARD VII, 1905

(Transferred to Minister of Justice, July 15, 1905.)

TORONTO, 14th July, 1905.

The Right Hon. Sir RICHARD CARTWRIGHT,
Minister of Trade and Commerce,
Ottawa, Ont.

SIR,—The following amendments have recently been made to article 239 of the Quebec License Law:—

“Any person not residing in the province, who is desirous of acting as a commercial traveller, by soliciting or taking orders for or selling goods, wares or merchandise, other than intoxicating liquors, or by advertising or offering such goods for sale, by sample catalogue or price list, for a person, firm or corporation having no place of business in Canada, shall first obtain a license therefor from the collector of provincial revenue for the district in which he begins his operations in the province.

“Such license is, subject to article 9 of this Act, granted for one year, and expires on the first day of the month of May subsequent to its issue.

‘For each license for a person not residing in the province to act as a commercial traveller by soliciting or taking orders for, or selling goods, wares or merchandise, other than intoxicating liquors, or by advertising or offering such goods for sale, by sample, catalogue or price list, for a person, firm or corporation having no place of business in Canada, three hundred dollars.’”

I represent a firm whose headquarters are in England but who employ me to look after their business here in Canada. The office which I occupy in Toronto may or may not be termed a place of business for the firm I represent, but if it is not termed a place of business for this firm I am debarred from soliciting in the province of Quebec any orders for this firm unless I pay the sum of \$300.

A person living in the province of Quebec has conferred upon him the privilege of representing any firm in Great Britain on payment of municipal taxes and a business tax which amount to about twenty or twenty-five dollars. It seems to me an outrage that I, a citizen of the Dominion of Canada, not happening to be a resident of the province of Quebec, cannot go into the city of Montreal and solicit orders for any of my principals even if I offer to pay the municipal tax and the business tax the same as is levied upon an agent residing in the province of Quebec. In my opinion such legislation is not within the power of any local legislature.

I am further advised that if a person is not a resident of the province of Quebec and happens to represent, say, ten firms whose headquarters are in Great Britain but who have no place of business in the Dominion of Canada, the Government claim that they are entitled to collect \$300 for each and every firm so represented. This would make \$3,000. Surely such a claim cannot be legal.

I beg to ask for a reply at your earliest convenience, and that you will let me know what action the Government, if any, intend to take in the matter.

Yours truly,

A. J. ROBERTSON,

The Honourable the Minister of Justice, Ottawa, Ont.:

TORONTO, CANADA, 17th July, 1905.

SIR,—On the 14th inst. I took the liberty of inclosing a communication to the Right Hon. the Minister of Trade and Commerce, and I beg to inclose to you a copy of this letter. The Honourable Minister informed me that the communication had been transferred to your department, and I shall feel obliged if you could let me have an immediate reply as I am desirous of proceeding to Montreal and do not wish to be mulcted in a tax of \$300, where I believe the tax to be *ultra vires* of the provincial parliament.

I may mention that there are a number of people in Toronto vitally interested in this question and with some of them the delay in action by the Dominion Government will mean a very heavy loss. Surely it cannot be possible that a citizen of the Dominion in the prosecution of his business cannot enter the province of Quebec without being subject to this enormous impost above and beyond what the citizen living in the province of Quebec has to pay.

Yours truly,

A. J. ROBERTSON.

DEPARTMENT OF JUSTICE, OTTAWA, 18th July, 1905.

SIR,—Your letter of the 14th instant respecting the amendments recently made to the Quebec License law has been transferred to the Minister of Justice by Sir Richard Cartwright. I am directed by the Minister of Justice to inform you that while, of course, he cannot undertake to advise you whether your office at Toronto is a place

of business in Canada of the firms for whom you act as agent within the meaning of the amendment to the Quebec Act, the other point, *i.e.*, whether the amending statute is within the powers of the Quebec Legislature to pass, will receive the Minister's most careful attention when the question of the validity of the Act comes to be considered.

I am, sir,

Your obedient servant,

A. POWER,

Acting D. M. J.

J. J. ROBERTSON, Esq.,

Agent,

Toronto, Ont.

TORONTO, July 18, 1905.

Hon. CHAS. FITZPATRICK,

Minister of Justice.

Ottawa.

DEAR SIR,—On July 5th, I wrote the Hon. Minister of Trade and Commerce regarding the tax on commercial travellers both in the Province of British Columbia and the recent Act passed by the Legislature of the Province of Quebec. I received a reply July 6th acknowledging receipt of same and advising that a copy of my letter had been forwarded to the Department of Justice. On July 14th, I again wrote the Hon. Minister of Trade and Commerce on the same matter and received his reply of the 15th that the letter had been transferred to your department and advising us to take the matter up with you. Referring to both these letters, I trust you will be able to go into this matter at once and give it your earnest consideration. As representing an association of seven thousand members, we are very vitally interested in having taxes which are barriers to trade and commerce removed. I may say that the Commercial Travellers' Associations of Canada with fully sixteen thousand members, and they are all on record as protesting against taxes of this kind.

The matter is most urgent as we understand that the Province of Quebec is now enforcing the Act and collecting a tax of \$300 from each traveller not a resident of the Province of Quebec for each house he solicits business for not having a place of business in Canada. We understand that having an office, paying a large rent for same, having a staff of clerks, carrying a large lot of samples, but not actually carrying and delivering stock, is not considered a place of business in Canada. No doubt this is a busy time with you on account of the House so near closing, but I trust that you will see the importance of treating with this matter at once.

Awaiting your reply, I have the honour to be,

Yours truly,

T. McQUILLAN,

President.

DEPARTMENT OF JUSTICE, OTTAWA, 19th July, 1905.

SIR,—I am directed by the Minister of Justice to acknowledge receipt of your letter of 18th instant, with reference to an Act recently passed by the legislature of Quebec, imposing a license fee of \$300 on commercial travellers.

In reply, I beg to say that the government has until the 2nd June, 1906, to consider the question of disallowance. Until the matter is laid before His Excellency the Governor General in Council in connection with the question whether or not the Act should be disallowed, it would not be proper for this department to express an

opinion as to its provisions, I may say, however, that the question of the validity of the Act will receive the earliest possible consideration.

I have the honour to be, sir,

Your obedient servant,

A. POWER,

Acting Deputy Minister of Justice.

T. McQUILLAM, Esq.,

President, Commercial Travellers' Association of Canada,
Toronto.

(Transferred by Minister of Trade and Commerce to Minister of Justice, 24 July, 1905.)

39 AND 40 CENTRAL HOUSE, CHRISTCHURCH BUILDINGS,
BIRMINGHAM, 11th July, 1905.

The Rt. Hon. Sir R. J. CARTWRIGHT, G.C.M.G., P.C.,
Minister of Trade and Commerce,
Ottawa.

SIR,—I am being inundated with letters from various firms doing business in Canada as to the effect of the law passed by the Quebec Legislature imposing a tax of £60 on commercial travellers doing business there. Many firms in Great Britain have gone to considerable expense sending out travellers to Canada for the purpose of opening up business, and this, more especially with firms who have not done any business, means the closing up of all business in Montreal and Quebec. It is not for me to make any comment on this tax, but undoubtedly it is giving cause for a great deal of irritation in business circles.

I have the honour to be, sir,

Your obedient servant,

P. B. BALL,

Commercial Agent at Birmingham.

"Commercial Agency Service."

(Transferred by Minister of Trade and Commerce to Minister of Justice, 27 September, 1905)

17 VICTORIA STREET, LONDON, S.W., 4th July, 1905.

SIR,—I beg to send, herewith, for your perusal, copy of a letter from Messrs. J. B. Lewis & Sons, Limited, of Stanford street, Nottingham, in reference to the new law passed by the Quebec Legislature providing for a \$300 tax on commercial travellers.

The communication in question is one out of quite a number that has reached me on the matter, and indicates the general feeling among business houses who are in the habit of sending travellers to Canada to represent them.

I am, sir,

Your obedient servant,

STRATHCONA,

High Commissioner.

The Right Honourable
The Minister of Trade and Commerce,
Ottawa, Canada.

J. B. LEWIS & SONS, LIMITED.

STANFORD STREET, NOTTINGHAM, June 28th, 1905.

DEAR SIR,—Referring to the recent impost of \$300 for a license to sell goods in the State of Quebec, we beg herewith to supplement the interview you kindly granted our representative, and to point out that this will press very hardly on manufacturers of staple products such as hosiery. We respectfully suggest that this action will not make for increase of trade or tend to foster the acquaintance and confidence so desirable between manufacturer and buyer.

We are continually told, "Do not rely on agents; come yourselves and study our market and requirements," and following this policy we have recently given up our resident agents with the intention of one of our principals making two trips each year.

This tax will be a serious item in the expenses, as the competition prevents any but the barest profits.

Under the above circumstances we should esteem it a favour if you could ascertain what constitutes, in the eyes of the Quebec Legislature, "a place of business." Would an arrangement with any resident agent having an office come under this head, and if so is it necessary to prove that such person is really selling the goods and getting commission on the sales? Otherwise it would appear that only a brass plate and the use of a resident's name is required in order to evade the tax.

Your kind interest will be much appreciated, as we are naturally unwilling to pay what a less scrupulous competitor might succeed in escaping.

Yours very respectfully,

J. B. LEWIS & SONS, LIMITED,

J. B. LEWIS, *Chairman*.

LORD STRATHCONA.

*(Transferred by Minister of Trade and Commerce to Minister of Justice,
27 September, 1905.)*

MONTREAL, August 18, 1905.

The Right Hon. Sir RICHARD J. CARTWRIGHT, G.C.M.G.,
Minister of Trade and Commerce,
Ottawa, Ont.

SIR,—I have the honour to inclose herewith copy of resolution passed at a meeting of delegates of all the Commercial Travellers' Associations of Canada, held at the Windsor Hotel, Montreal, Tuesday, August 15, 1905, and to which we beg your consideration.

Your obedient servant,

JAS. S. N. DOUGALL,

President D.C.T.A.,

Chairman.

MONTREAL, August 17, 1905.

A meeting of delegates of all the Associations of Commercial Travellers of Canada took place at the Windsor Hotel, Montreal, Tuesday, August 15, 1905, at 6 p.m.

Present: *(The names of the delegates were here set out.)*

On motion, Mr. J. S. N. Dougall was elected chairman, and Mr. F. J. C. Cox secretary.

The acting secretary introduced the following motion, which after a short discussion was on motion of Mr. John Horne, president of the Northwest Commercial

Travellers' Association, seconded by Mr. J. L. Hetherington, president of the Maritime Commercial Travellers' Association, unanimously adopted:—

This meeting of the representatives of the Commercial Travellers' Associations of Canada unanimously resolved that the legislation enacted by three of the provinces placing a tax on commercial travellers is detrimental to the interests of our several associations and the members thereof; also to the large commercial interests which they represent. This legislation also appears to us contrary to the spirit of confederation, it being in restraint of that freedom of trade and commerce which is so essential between the various provinces of our Dominion. We would, therefore, at this joint meeting again place ourselves on record as decidedly opposed to this legislation, and in the continued hope and expectation that His Majesty's Government of the Dominion will not permit such legislation to remain on the Statute Book of any of the provinces.

Resolved, that a copy of this resolution be sent to the Right Hon. Sir Richard J. Cartwright, G.C.M.G., Minister of Trade and Commerce, and the Right Hon. Sir Wilfrid Laurier, Premier of Canada; also to the press.

The meeting then adjourned to meet again next year on a date to be arranged.

DOWNING STREET, 1st September, 1905.

MY LORD,—I have the honour to transmit to you for the information of your Ministers, with reference to my despatch No. 233 of 29th June, the papers noted in the subjoined schedule.

I have, etc.,

ALFRED LYTTLETON.

The Officer Administering
the Government of Canada.

Date	Description of Document
1905	
August 23.	Board of Trade to Colonial Office (and inclosures).
" 23.	Colonial Office to Royal Axminster Carpet Manufacturers' Association.
" 31.	Association of Trade Protection Societies to Colonial Office. tion; Messrs. Christy Company, and Association of Trade Protec- tion Societies. Tax imposed by the Legislature of Quebec on commercial travellers.

BOARD OF TRADE (COMMERCIAL DEPARTMENT),
7, WHITEHALL GARDENS,

LONDON, S.W., 23 August, 1905.

SIR,—I am directed by the Board of Trade to transmit herewith, to be laid before Mr. Secretary Lyttelton, copies of two letters which have been received in this department from the Axminster Carpet Manufacturers' Association and from Messrs. Christy & Company with reference to the treatment of commercial travellers doing business in the province of Quebec for other than Canadian houses.

The Association and Messrs. Christy have been informed that their letters have been referred to your department.

I have, &c.,

A. WILSON FOX.

The Under Secretary of State,
Colonial Office.

M. Tomkinson, Esq., to the Secretary of Board of Trade.

KIDDERMINSTER, 14th August, 1905.

SIR,—Permit me to call your attention to a clause in an Act of 5 Edw. VII., c. 14, whereby the Quebec License Law of 63 Vic., c. 12, is amended by the addition, amongst others, of the following clauses:—

"2. The following section and articles are added after article 341d of the said Act:

"SECTION VIIIc.

"Non-resident Commercial Travellers Representing Persons, &c., having no place of Business in Canada.

"341e. Any person not residing in the province who is desirous of acting as a commercial traveller by soliciting or taking orders for or selling goods, wares or merchandise, other than intoxicating liquors, or by advertising or offering such goods for sale, by sample, catalogue or price list, for a person, firm or corporation having no place of business in Canada, shall first obtain a license therefor from the collector of provincial revenue for the district in which he begins his operations in the province.

"Such a license is, subject to article 9 of this Act, granted for one year, and expires on the first day of the month of May subsequent to its issue"; and article 342 of the said Act is amended by adding thereto a provision for payment for each such license of \$300.

The Act also contains provisions for penalties for infringement.

The Comptroller of Provincial Revenue on 6th June, 1905, wrote to Mr. Ransom, the representative of the Carpet Manufacturing Company, Limited (Kidderminster) as follows: "The law is now in force and in operation. By place of business is meant an agency or office with a resident agent. Such agent, acting for a commercial corporation, would not pay license duty under the inclosed statute, but the company he represents would be liable to taxation under the Commercial Corporation Act, of which a pamphlet is being printed that will be ready in a few days, and of which I will send you a copy."

If the provisions of this Act are or can be enforced, it will be very prejudicial to the trade of this country, and this association urge that vigorous steps be taken to prevent this serious charge on the sale of goods through travellers from this country, as with many firms it would be too serious an addition to their expenses, and their trade in this market would in consequence seriously suffer.

I beg you will favour this with your consideration.

I am, &c.,

M. TOMKINSON,

Chairman of the Royal Axminster Carpet Manufacturers' Association.

35 GRACECHURCH STREET, LONDON, E.C., 15th August, 1905.

The Rt. Hon. GERALD BALFOUR,
H.M. President, Board of Trade,
London, S.W.

RT. HON. SIR,—We have seen in the newspapers, a report that in the province of Quebec, Dominion of Canada, a tax of about £60 is to be imposed on commercial travellers representing other than Dominion houses. We beg to ask if you can give us any information about this matter, and if the report is correct. We respectfully submit that such a tax is very unfair to the British manufacturers, and likely to considerably hamper British trade in that market.

May we ask that you will use your influence against any such imposition, at least as far as concerns the British houses.

Yours, &c.,

For Christy & Company, Limited.

A. G. SPEERS.

Director.

J. H. Hadwen, Esq., to Mr. Secretary Duttelton.

ASSOCIATION OF TRADE PROTECTION SOCIETIES OF THE UNITED KINGDOM

16 BERNERS STREET, LONDON, W., 23rd August, 1905.

SIR,—On behalf of the members of this association, I beg to forward a protest against the action of the Quebec Legislature in imposing an annual tax of three hundred dollars upon commercial travellers representing firms having no place of business in Canada.

As the Colonial Office is aware, this association, representing as it does over 50,000 merchants and traders, has taken a peculiar interest in the taxes imposed by British colonies upon commercial travellers, and has in the interests of the development of our colonial trade, urged the reduction or remission of these duties. It is unfortunate that at a time when the home country is so greatly interested in the welfare of her colonies, that a tax so detrimental to the encouragement of mutual trading relations should be imposed.

I trust that the Colonial Office will be willing to communicate to the Quebec Legislature some indication of the feelings of protest which British merchants and exporters have expressed concerning the tax, and that you will be good enough to exercise such action as may be possible or desirable, to secure a mitigation or the abolition of the impost.

I am, &c.,

J. H. HAWDEN.

Secretary.

DOWNING STREET, 31st August, 1905.

SIR,—

GENTLEMEN,—

I am directed by Mr. Secretary Lyttelton to acknowledge the receipt of your letter
14th to 1 and 2 only
of the 15th instant (addressed to the Board of Trade)
23rd regarding the tax imposed by

23rd

the Legislature of Quebec on commercial travellers representing firms having no place of business in Canada, and to say that the Secretary of State has no official information on the subject, but that he is awaiting a communication from the Governor General of Canada, who has been requested to forward a copy of the Act in question and to report on the circumstances in which it was passed.

In the meantime a copy of your letter will be forwarded to the Governor General for the consideration of his Ministers, with whom it rests to decide whether the Act shall be allowed to remain in operation.

I am, &c.,

H. BERTRAM COX.

The Chairman of the

Royal Axminster Carpet Manufacturers' Association.

Messrs. Christy & Company, Limited,
The Secretary of the Association of the
Trade Protective Societies of the United Kingdom.

DOWNING STREET, 6th September, 1905.

MY LORD,—I have the honour to transmit to you for the consideration of your Ministers, with reference to my despatch No. 31 of the 1st instant, the papers noted in the subjoined schedule.

I have, &c.,

ALFRED LYTTTELTON.

The Officer administering the Government of Canada.

Date	Description of Document	—
1905		
August 25.....	Messrs. Anderson to C. O.....	The taxes levied on commercial travellers in Quebec and British Columbia.
" 31.....	Board of Trade to C. O.....	
September 6.....	Colonial Office to Mr. J. Bidlake.....	
" 6.....	Colonial Office to Messrs. Anderson.....	

12 PRINCESS SQUARE, GLASGOW, 25th August, 1905.

SIR,—May we take the liberty of asking whether your department is in possession of any information regarding the recent Act of the Quebec Legislature taxing British travellers in the province.

We understand the Act was receiving the attention of the Dominion Government, and its repeal might be looked for.

Our representative ordinarily visits Canada in the Fall, but, if the prohibition holds good, we cannot afford to send him.

This, from the Canadian point of view, may be an excellent argument against the repeal of the Act, but we can hardly be blamed for looking at it from a different point of view.

Thanking you in anticipation, we are, &c.,

WM. ANDERSON, Director,

for WM. ANDERSON & COMPANY, LIMITED.

BOARD OF TRADE (COMMERCIAL DEPARTMENT),

7 WHITEHALL GARDENS, LONDON, S.W., 31st August, 1905.

SIR,—With reference to the letter from this department No. C. 4320, of the 23rd instant, I am now directed by the Board of Trade to forward to you herewith to be laid before Mr. Secretary Lyttelton, copy of a further communication (together with its inclosure) which has been received in this department from Mr. J. Bidlake, with reference to the treatment of commercial travellers in British Columbia and in the province of Quebec.

A copy of the reply sent to Mr. Bidlake from this department is also inclosed for Mr. Secretary Lyttelton's information.

I have, &c.,

ARTHUR WILSON FOX.

STROUD, GLOUCESTERSHIRE, 25th August, 1905.

To the Officer of Board of Trade, London,

DEAR SIR,—When in Canada in June, I heard that in British Columbia a tax of fifty dollars half-yearly was being levied on all commercial travellers doing business there—and that there was a likelihood of its being done away with. Will you kindly let me know; also can you give me any information *re* inclosed notice (cut from the *Standard* yesterday) as to the Quebec province, as I did not hear of this when I was there. .

Yours, &c.,

J. BIDLAKE.

BOARD OF TRADE (COMMERCIAL DEPARTMENT),
7 WHITEHALL GARDENS, 31st August, 1905.

SIR,—I am directed by the Board of Trade to acknowledge the receipt of your letter of the 25th instant with reference to the treatment of commercial travellers in British Columbia and in the province of Quebec, and in reply, I am to inform you that your letter has been referred to the Colonial Office.

I am to add that the Board have not as yet received any information which would tend to confirm the report alluded to in your letter to the effect that the tax of \$50 for every six months at present levied by the municipalities of British Columbia on commercial travellers is likely to be abolished.

I have, &c.,

ARTHUR WILSON FOX.

J. BIDLAKE, Esq.,

DOWNING STREET, 6th September, 1905.

SIR,—I am directed by Mr. Secretary Lyttelton to acknowledge the receipt of your letter of the 25th ultimo addressed to the Board of Trade regarding the tax imposed by the Legislature of Quebec on commercial travellers representing firms having no place of business in Canada, and to state that he is awaiting a report on the subject from the Governor General of Canada.

2. I am to add that Mr. Lyttelton has no information as to the prospect of the abolition of the similar tax in British Columbia.

I am, &c.,

C. P. LUCAS.

J. BIDLAKE, Esq.,

DOWNING STREET, 6th September, 1905.

GENTLEMEN,—I am directed by Mr. Secretary Lyttelton to acknowledge the receipt of your letter of the 25th ultimo, regarding the tax imposed by the Legislature of Quebec on commercial travellers representing firms having no place of business in Canada and to state that he is awaiting a report on the subject from the Governor General of Canada.

I am, &c.,

C. P. LUCAS.

Messrs. W. ANDERSON & Co.

From Mr. Lyttelton to Lord Grey

DOWNING STREET, 2nd November, 1905.

My LORD,—With reference to my despatch No. 353 of the 5th of October respecting the Act of the Quebec Legislature imposing a tax on commercial travellers representing firms having no place of business in Canada, I have the honour to transmit a copy of a memorial from the Association of Chambers of Commerce of the United Kingdom on the subject and to inform you that I shall be glad if the representations contained therein can have the consideration of your ministers and of the provincial government of Quebec.

I have, &c.,

ALFRED LYTTLETON.

Commercial Travellers' Licenses

To the Right Hon. ALFRED LYTTLETON, M.P.,
Secretary of State for the Colonies.

The memorial of the Association Chambers of Commerce of the United Kingdom, of which the following Chambers of Commerce are members:—

(The names of the Associated Chambers were here set out)

SHEWETH:

That the following resolution was adopted at the autumnal meeting of the association recently held at Liège, in Belgium:—

“That this association notes with regret the proposal of the Quebec Legislature to impose a tax upon commercial travellers in Quebec, including British commercial travellers, and would respectfully urge upon His Majesty's Government the desirability of endeavouring to obtain a remission, or if that be not possible a reduction of the tax in the case of British subjects and of similar taxes in all British colonies.”

The association views with much regret the growing practice in the various colonies of imposing these taxes not only upon foreigners but upon British commercial travellers visiting these countries. A consideration of the burdens willingly borne by the Mother country in safe-guarding the colonies should be sufficient to ensure the free access of every British subject to all parts of the British dominions. The imposition of such a petty tax seems to this association to be out of harmony with current opinion as to the unity of the Empire.

Inasmuch as entirely free access to the United Kingdom is given to commercial travellers from the colonies, the same privilege should be given to British commercial travellers visiting any of His Majesty's dominions.

The Quebec proposal is one of the most recent instances of the practice of taxing commercial travellers (including British) entering the colony. The Canadian Manufacturers' Association recently visited the great centres of industry in this country, and were received with great amity, and this association respectfully suggests that the present is a fitting time to urge the withdrawal of the proposal in the case of Quebec so far as it affects British commercial travellers.

In conclusion your memorialists trust that you will place these views before the legislatures of the various colonies at present imposing these taxes throughout His Majesty's dominions.

Given under the common seal of this association the 24th day of October, 1905.

W. H. HOLLAND,

President.

EDWARD W. FITHIAN,

Secretary.

Parliament Mansions,
Victoria Street, Westminster, S.W.

(Approved 17th November, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Quebec, passed in the fifth year of His Majesty's reign, 1905, and received by the Secretary of State for Canada on 2nd June last, and he is of opinion that these statutes may be left to such operation as they may have, except the following, which will be specially considered:—

Chapter 13, intituled "An Act to amend the Quebec License Law."

Chapter 14, intituled "An Act to amend the Law respecting licenses and taxes upon commercial companies and corporations."

Chapter 15, intituled "An Act to provide for a tax on transfers of shares, bonds, debentures or debenture stock."

Chapter 66, intituled "An Act to incorporate the Industrial Life Insurance Company."

Chapter 67, intituled "An Act to incorporate the Eastern Fire Insurance Company of Canada."

Chapter 68, intituled "An Act to incorporate La Société de Secours Mutuels la Prevoyance."

Chapter 69, intituled "An Act to incorporate La Compagnie d'Assurance Populaire."

Chapter 72, intituled "An Act to incorporate the Anglo-American Trust Company."

Chapter 73, intituled "An Act to incorporate the Colonial Trust and Securities Company."

Chapter 74, intituled "An Act to incorporate the Collateral Loan Company."

Chapter 75, intituled "An Act to extend the powers of the St. Lawrence Investment Society, Limited, and to change its name."

Chapter 76, intituled "An Act to incorporate the Yukon Loan and Trust Company."

Chapter 77, intituled "An Act to incorporate the Canadian Trust Company."

Chapter 78, intituled "An Act to incorporate the Havana Trust Company."

Chapter 79, intituled "An Act to incorporate the Imperial Trust Company."

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 13 November 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 13 of the Statutes of the Province of Quebec, 1905, intituled "An Act to amend the Quebec License Law."

Sections 49, 55 and 57 refer to licenses for private banks. It appears to the undersigned that the legislature of Quebec should not provide for the raising of taxes by licenses to private banks, inasmuch as such banks not being authorized by the Bank Act, cannot legally engage in business. The undersigned suggests, therefore, for the consideration of the Government of Quebec, the propriety of repealing these sections so far as they relate to private banks. Since, however, the licensing of private banks

by provincial authority cannot legalize them or exempt them from the penalties provided by the Bank Act, the undersigned does not on account of the objections stated recommend disallowance of this statute.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 2 May, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 14 of the Statutes of the Province of Quebec, 1905, intituled "An Act to amend the Law respecting Licenses and Taxes upon Commercial Companies and Corporations."

Numerous objections have been made to this Act. It requires that any person not residing in the province who desires to act as a commercial traveller for the selling of goods within the province for a person, firm or corporation having no place of business in Canada shall first obtain a license therefor from the Collector of Provincial Revenue. The license is \$300, and the license expires on the first day of May in each year. The substantial grounds of objection in effect are that the Act unduly discriminates against traders not domiciled within Canada and that it is *ultra vires* as affecting the regulation of trade and commerce.

The undersigned is not, however, prepared to recommend the disallowance of this Act upon any ground of policy and inasmuch as the question of *ultra vires* may be conveniently considered and determined by the courts, the undersigned is of opinion that it would be better to allow that question to be raised and determined in those tribunals. He does not consider that the unconstitutionality of the Act is so far established as to justify a recommendation for disallowance for that reason.

The undersigned, therefore, recommends that this Act be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 17 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 15 of the Statutes of the Province of Quebec, 1905, intituled: "An Act to provide for a tax on transfers of shares, bonds, debentures or debenture stock."

By this statute it is enacted that in order to provide for the exigencies of the public service there shall be levied, in accordance with the rules stated in the Act, a tax upon every sale, transfer or assignment of shares, bonds, debentures or debenture stock issued by any corporation or company made or carried into effect in the province of Quebec; that the tax shall be paid in adhesive stamps; and that the amount of stamps to be affixed shall be two cents for every hundred dollars or fraction thereof of the par value of the shares, bonds, debentures or debenture stock so transferred or assigned. It is further provided that stamps shall in all cases be supplied and affixed

by the vendor, transferor or assignor, unless the sale, transfer or assignment is effected through a broker, in which case the broker affixes the stamp, and may recover the cost thereof from the vendor, transferor or assignor, and finally it is enacted that no sale, transfer or assignment upon which the tax is imposed by the Act is not paid shall be legal, valid or binding.

This Act, if within provincial authority, must, the undersigned apprehends, be supported under the power of direct taxation within the province in order to the raising of a revenue for provincial purposes. That subject was considered by the Judicial Committee of the Privy Council in the case of the Attorney General for Quebec vs. The Queen Insurance Company, 3 Appeal Cases, 1900. The question arose in that case as to the validity of a statute of Quebec requiring in effect the fixing of adhesive stamps to every policy of insurance, receipt of renewal. The insurer was required to affix the stamp, and the price thereof went to the Crown for the use of the province. There was also provision for avoiding the policy if the stamp were not affixed. The Master of the Rolls in delivering the judgment of the committee, stated that the single point to be decided was whether a stamp Act, an Act imposing a stamp on policies, renewals, and receipts, with provisions for voiding the policy, renewal or receipt in a court of law if the stamp is not affixed, is or is not direct taxation, and he said "there is a multitude of authorities to show that such a stamp imposed by the legislature is not direct taxation. The political economists are all agreed. There is not a single instance produced on the other side. The number of instances cited by Mr. Justice Taschereau, in his elaborate judgment, it is not necessary here to more than refer to. But surely if one could have been found in favour of the appellants, it was the duty of the appellants to call their Lordships' attention to it. No such case has been found. Their Lordships, therefore, think they are warranted in assuming that no such case exists. As regards judicial interpretation, there are some English decisions, and several American decisions, on the subject, many of which are referred to in the judgment of Mr. Justice Taschereau. There, again, they are all one way. They all treat stamps either as indirect taxation, or as not being direct taxation. Again, no authority on the other side has been cited on the part of the appellant.

"Lastly, as regards the popular use of the word, two cyclopedias at least have been produced, showing that the popular use of the word is entirely the same in this respect as the technical use of the word. And here, again, there is an utter deficiency on the part of the appellants in producing a single instance to the contrary. That being so, it is not necessary, it appears to their Lordships, for them to consider the scientific definition of direct or indirect taxation. All that it is necessary for them to say is that finding these words used in an Act of parliament, and finding that all the then known definitions, whether technical or general, would exclude this kind of taxation from the category of direct taxation, they must consider it was not the intention of the legislature of England to include it in the term of 'direct taxation,' and, therefore, that the imposition of this stamp duty is not warranted by the terms of the 2nd subsection of section 92 of the Dominion Act."

The undersigned, before concluding as to what recommendation he ought to make upon this Act, would like to have the reasons of the Government of Quebec for holding, if they do hold, that the above-quoted observations of the Master of the Rolls do not apply in this case.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, and that he be asked to inform Your Excellency's government as to their reasons for supporting this legislation as within the authority of the province to levy money by direct taxation.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following statutes of the province of Quebec, passed at the last session of the legislature, 1905:—

Chapter 66, intituled "An Act to incorporate the Industrial Life Insurance Company."

Chapter 67, intituled "An Act to incorporate the Eastern Fire Insurance Company of Canada."

Chapter 68, intituled "An Act to incorporate La Société de Secours Mutuels la Prevoyance."

Chapter 69, intituled "An Act to incorporate La Compagnie d'Assurance Populaire."

Chapter 72, intituled "An Act to incorporate the Anglo-American Trust Company."

Chapter 73, intituled "An Act to incorporate the Colonial Trust and Securities Company."

Chapter 74, intituled "An Act to incorporate the Collateral Loan Company."

Chapter 75, intituled "An Act to extend the powers of the St. Lawrence Investment Society, Limited, and to change its name."

Chapter 76, intituled "An Act to incorporate the Yukon Loan and Trust Company."

Chapter 77, intituled "An Act to incorporate the Canadian Trust Company."

Chapter 78, intituled "An Act to incorporate the Havana Trust Company."

Chapter 79, intituled "An Act to incorporate the Imperial Trust Company."

These are statutes incorporating companies,—insurance companies or trust companies. They confer powers in general terms to carry on the business of insurance or trust and investment. They contain no provisions limiting the business of the companies to the province of Quebec, and by some of these Acts the intention is plainly implied that the companies may carry on business beyond the limits of the province. A provincial legislature has power only with respect to the incorporation of companies to incorporate companies with provincial objects, and it was held by the Judicial Committee of the Privy Council in *Loranger vs. The Colonial Building and Investment Association*, 9 Appeal Cases, 157, that the parliament of Canada could alone constitute a company with powers to carry on its business consisting of various kinds throughout the Dominion. For these reasons the undersigned considers that each of the above-mentioned Acts should be amended within the time for disallowance by expressly limiting the powers of the several companies to the province of Quebec.

This is a matter of great importance, because large interests and a great deal of property become involved in the business and contracts of these companies, and much confusion and loss would arise if their contracts were to be held *ultra vires*. It is inexpedient, therefore, that there be any question about the validity of their incorporation or the extent of their powers.

Several of these Acts contain a clause, such, as for instance, section 18 of Chapter 68, providing that the company may invest or deposit in foreign securities such portion of its moneys as may be required for the maintenance of any branch abroad, without, however, exceeding at any time the reserve required by law on such policies in force abroad.

If, as is contemplated by such provision, the company were to establish agencies in the other provinces and carry on business there, it is plain that such business could only be regarded as valid if within the corporate powers of the company, and it seems to the undersigned very difficult in view of the provisions of sections 91 and 92 of the *British North America Act*, and the decision of the Judicial Committee to hold that such powers can be validly conferred by the province.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmittted to the Lieutenant Governor of Quebec, with a request that he inform Your Excellency's Government whether the amendments hercin indicated will be made to these Acts within the time provided for disallowance.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

From Lord Elgin to Lord Grey.

DOWNING STREET, 7th March, 1906.

My LORD.—With reference to Mr. Lyttelton's despatch No. 353 of the 5th October last, I have the honour to transmit to you, to be laid before your ministers, copies of letters, as noted in the margin, from the Birmingham Chamber of Commerce and the Board of Trade relative to the taxation on commercial travellers in Quebec.

2. I shall be glad to learn at the early convenience of your ministers what changes have been made or are contemplated by the Quebec Government in the law on this subject.

I have, &c.,

ELGIN.

BIRMINGHAM CHAMBER OF COMMERCE (Incorporated).

REGISTERED OFFICES:—WINCHESTER HOUSE,

VICTORIA SQUARE, 2nd February, 1906.

My LORD,—I am directed to transmit to you herewith copy of a report adopted by the council of this chamber on the 24th ulto., with reference to the taxes levied in Quebec on resident commercial agents.

I am to ask that Your Lordship will be good enough to give the report your careful consideration and to express a hope that you will be able to adopt the suggestion contained therein.

I am, &c.,

G. HENRY WRIGHT,

Secretary.

The Right Honourable Lord Elgin, &c., &c., &c.,

BIRMINGHAM CHAMBER OF COMMERCE (Incorporated).

EXTRACT from a report of the General Purposes Committee adopted by the Council on the 24th January, 1906.

TAXES ON RESIDENT AGENTS IN QUEBEC

A serious complaint has been made to your committee with regard to the heavy taxes imposed by the Provincial Government of Quebec on the resident agents of foreign firms (incorporated) including those of the United Kingdom. The information which has been communicated to your committee is to the effect that a resident agent in Quebec has to pay a license fee of one hundred (\$100) dollars on behalf of each incorporated firm he represents; that he has also to pay on behalf of each such firm a tax of fifty (\$50) dollars per annum for the right to have an office for carrying on his business; and that he has to pay further a tax of one-tenth of one per cent of the capital employed in the province by each such firm. Furthermore, under the pro-

vincial law every firm must give to its resident agent a power of attorney conveying the absolute right to act for and full responsibility on behalf of his principals—rights and responsibilities, it is said, which few limited companies would confer on a managing director. The first two imposts came into effect in June last, but the tax of fifty (\$50) dollars is said to have been provided for for a number of years, although it has not previously been rigidly enforced.

Your committee are of opinion that the strongest possible protest should be made against such vexatious and heavy imposts which hinder the development of trade. Under the present conditions it is practically prohibitive for many traders to secure representation in Quebec. If a British house send a commercial traveller to the province he has to pay a tax of 300 dollars before he can ask or take an order; whilst if an incorporated firm desire to have a resident agent they have to pay the heavy taxes above mentioned.

Your committee therefore recommend that strong representation be made to the Colonial Secretary, urging him to protest against the taxes referred to and to use his best offices with the view of securing their abolition, at any rate so far as British commercial travellers are concerned.

G. HENRY WRIGHT,
Secretary.

Birmingham, February 2, 1906.

BOARD OF TRADE (Commercial Dept.),
7 WHITEHALL GARDENS, LONDON, S.W., 2nd March, 1906.

SIR,—I am directed by the Board of Trade to state that their attention has been drawn to a report in the *Times* of the 26th ultimo, to the effect that the Quebec Government have announced certain proposed amendments of their taxation on commercial travellers. According to this report a traveller doing business with a wholesale house only will be required to pay any annual tax of twenty pounds; a traveller selling to both wholesale and retail houses a tax of forty pounds, and a traveller selling to a retail house only, a tax of eighty pounds.

As the Board have received no official information on this subject, I am to ask you to be good enough to move, Lord Elgin, should he see no objection, to cause inquiry to be made as to the accuracy of the report in question, for the information of this department.

I have, &c..

LLEWELYN SMITH.,

The Under Secretary of State.
Colonial Office.

DEPARTMENT OF STATE, OTTAWA, June 1, 1906.

SIR,—I have the honour to invite your attention to the following:—

On November 20, 1905, I forwarded to you a Minute of the Privy Council, approved by his Excellency the Governor General on the 15th of the same month, covering a report of the Minister of Justice, dated 2nd November, upon chapter 13 of the Acts passed by the Legislature of the Province of Quebec at its last session (1905) intitled "An Act to amend the Quebec License Law." On the same day I addressed you a further despatch covering another report of the Minister of Justice of 2nd November, 1905, on chapters 66, 67, 69, 72, 73, 74, 75, 76, 77, 78 and 79 of the Acts of your Legislature passed during the session of 1905. In this despatch I asked to be favoured with a reply of your ministers before the date fixed for disallowance.

On November 23, 1905, I transmitted two further reports of the Minister of Justice, dated 2nd November, upon chapter 15 and certain other of the Statutes of your Legislature passed during the session of 1905.

A few days later in each of the above cases I received an acknowledgement from you conveying the assurance that your Government would give its immediate attention to the subject of these despatches.

Nothing further having been heard on this subject, the acting Under Secretary of State, at the instance of the Minister of Justice, addressed a despatch to you on the 31st of March last, calling attention to the previous communications pressing for an immediate reply. This despatch was acknowledged by you on the 6th of April with the information that it had been referred to your Attorney General.

On the 5th May instant, I sent you a further report of the Minister of Justice upon chapter 14 of the statutes passed at the last session of your legislature, to which no reply other than a simple acknowledgement has been received.

On the 31st May the Under Secretary of State telegraphed you as follows:—

DEPARTMENT OF STATE, OTTAWA, 31st May, 1906.

"Lieutenant Governor of Quebec,

"Quebec.

"I am directed to invite your Honour's attention to my despatches of the 20th November, 1905, and 31st March and 5th May, 1906, on the subject of provincial legislation, and to renew my request for an immediate reply thereto. It is necessary that the Minister of Justice should be apprised of the intention of your ministers with regard to the exceptions taken by him in respect of this legislation at the earliest possible moment."

To which your private secretary replied that the message had been received and transmitted to your prime minister.

The time for disallowance expires to-morrow.

I deem it my duty to point out to you that your advisers do not appear to have treated this government with their wonted courtesy in this matter. It is now more than six months since their attention was invited to the objections entertained by the Minister of Justice to their legislation, yet during that long period no answer has been received to the objections raised by them.

I have the honour to be, sir,

Your obedient servant,

R. W. SCOTT,
Secretary of State.

His Honour the Lieutenant Governor of Quebec.

(Translation.)

QUEBEC, June 4, 1906.

To the Honourable the Secretary of State,
Ottawa.

SIR,—In reply to your despatch of the 31st ultimo, I have the honour to inclose herewith a certified copy of a report of my Attorney General, dated 1st instant, respecting certain despatches relating to laws passed by the Quebec Legislature at its session of 1905, as submitted by the Honourable the Provincial Secretary.

I have the honour to be, sir,

Your obedient servant,

L. A. JETTE,
Lieutenant Governor.

(Translation)

QUEBEC, June 1, 1906.

Report respecting despatches of the Honourable the Secretary of State of Canada relating to laws passed by the Quebec Legislature at its Session of 1905, as submitted by the Honourable the Provincial Secretary

The undersigned has the honour to report as follows:—

He has taken cognizance of a letter from the Under Secretary of State to the Lieutenant Governor of the province of Quebec calling the latter's attention to the Secretary of State's despatches of the 20th November, 1905, and of the 1st March and 1st May, 1906, respectively, and asking for a reply to these communications.

The matters to which that communication refers are the following:—

1. A minute of council, dated 13th November, 1905, covering a report from the Minister of Justice of the 2nd November, 1905, with respect to chapters 66, 67, 68, 69, 72, 73, 74, 75, 76, 77, 78 and 79 of the Quebec Statutes of 1905.

2. A minute of council dated the 17th November, 1905, covering a report from the Minister of Justice of the 2nd November, 1905, respecting Chapter 15 of the Quebec Statutes of 1905.

3. A minute of council dated the 2nd May, 1906, covering a report from the Minister of Justice of the 2nd November, 1905, relative to Chapter 14 of the Statutes of Quebec of 1905, he recommends that the Act be left to its operation.

The undersigned did not deem it his duty to answer the letter relating to Chapter 14 of the Statutes of 1905, inasmuch as the same had been sent to the government of the province of Quebec for its information only, and that receipt thereof had been acknowledged. It relates to that part of the amendments made to the license law dealing with licenses required from foreign commercial travellers doing business in the province of Quebec; it states that in the opinion of the Minister of Justice the unconstitutionality of the Act is not so far established as to justify a recommendation for its disallowance on that ground, the minute of council recommending that the law be left to its operation and that copy of the report of the Minister of Justice be transmitted to the Lieutenant Governor of Quebec for the information of his Government.

The fate of this law having been thus definitely settled by the recommendation of the Minister of Justice, no answer was therefore necessary.

The other two communications above mentioned relate, one to the Act providing for a tax on transfers of shares, bonds, debentures, or debenture stock (Chapter 15 of the Statutes of 1905); and the other to Acts respecting the incorporation of insurance companies and trust companies, the chapters of which are above set forth.

No written answer has so far been made to these two communications, because the Minister of Justice, in the course of an interview when these matters were discussed, gave the Department of the Attorney General to understand that no further action would be taken in regard to the explanation or information asked for in the said letters.

As regards the law providing for a tax on transfers of shares (1905, Chapter 15), it suffices to say that this law was repealed and superseded by Chapter 12 of the Statutes of the session of 1906, and this repeal was made to meet requirements of a purely administrative character. The Government of Canada should be made acquainted with this fact, which is of a nature to make any further action on its part unnecessary in respect of this law.

At the same time, it is deemed proper to inform that government that this repeal was not made because of the fact that the government of the province acknowledged the propriety of the representations made to the latter upon this subject.

The laws respecting insurance companies and trust companies which, in the opinion of the Minister of Justice, would contain unconstitutional features, are the following:—

Chapter 66, intituled: "An Act to incorporate the Industrial Life Insurance Company."

Chapter 67, intituled: "An Act to incorporate the Eastern Fire Insurance Company of Canada."

Chapter 68, intituled: "An Act to incorporate '*La Société de Secours-Mutuels la Prévoyance*'."

Chapter 69, intituled: "An Act to incorporate '*La Compagnie d'Assurance populaire*'."

Chapter 72, intituled: "An Act to incorporate the Anglo-American Trust Company."

Chapter 73, intituled: "An Act to incorporate the Colonial Trust and Securities Company."

Chapter 74, intituled: "An Act to incorporate the Collateral Loan Company."

Chapter 75, intituled: "An Act to extend the powers of the St. Lawrence Investment Society, Limited, and to change its name."

Chapter 76, intituled: "An Act to incorporate the Yukon Loan and Trust Company."

Chapter 77, intituled: "An Act to incorporate the Canadian Trust Company."

Chapter 78, intituled: "An Act to incorporate the Havana Trust Company."

Chapter 79, intituled: "An Act to incorporate the Imperial Trust Company."

These laws would exceed the powers of the Quebec legislature on grounds which can be summed up as follows:—

1. They confer, in general terms, to companies to which they relate, the power to carry on the business of insurance, or trust, and contain no provision limiting the business of these companies to the Province of Quebec.

2. It may be inferred from the provisions of some of these Acts that it was the intention of the Legislature to allow these companies to carry on business beyond the limits of the province.

In the opinion of the undersigned, these reasons would hardly justify the disallowance of the laws in question.

He would represent that, however, general the terms of an Act may appear, the legislature should not be supposed to have exceeded its powers in adopting the same. It should in effect be presumed that it has acted within the limits of its powers, unless the terms of the Act would plainly imply that its intention was to do otherwise.

The courts have many a time acknowledged this mode of interpretation. Should it now be disavowed, very few laws incorporating companies either of a federal, or of a provincial character, would be considered *intra vires*, because in the former case, the scope of their business has not been formally confined to Canada, and in the latter, on account of the absence of a special enactment to the effect that the companies thereby incorporated cannot do business outside of the province which has granted their charters.

Moreover to insert in a charter a clause of the nature of that whose omission is censured would involve a loss for the incorporated company of all the benefits derived from the rules of international private law; according to these rules, a company duly incorporated in a province can carry on business in the other provinces and abroad, provided that the laws of such other provinces, or the laws of foreign countries do not prevent it, and that its charter does not contain any restrictions to that effect. (See cases p. 637, Lefroy, Legislative Power in Canada.)

Is the censure attached to these laws to be attributed to any intention of depriving in future these companies of the benefit of this privilege? If so, this intention would not find its justification either in the text of the constitution or in the decisions of the courts.

As to the second complaint made against these laws, the undersigned is ready to admit that Provincial Legislatures can incorporate only companies with provincial

objects, and likewise the Parliament of Canada alone can grant incorporation to companies with objects other than provincial.

On the other hand, he submits that there is nothing in the laws in question which violates these rules. The only particular provision to which attention is called by the Minister of Justice is one which authorizes a company to invest in foreign securities, such portions of its moneys as may be required for the maintenance of any agency abroad. The object of this clause is not to confer on the company the power to do business abroad, as that power is already granted by private international law. It simply affords to the company, in case it would take advantage of the privileges conferred by that law, convenience to deposit abroad such moneys as are required to insure the maintenance of its agency. The decision quoted by the Minister of Justice in his memorandum (The Colonial Building and Investment Company and the Attorney General of Quebec) does in no wise contrast with this theory.

It only establishes that fact that the Parliament of Canada did not exceed its powers by incorporating a company whose operations are, according to its charter, to be carried on throughout the Dominion of Canada, while, in fact, such operations are limited to the Province of Quebec.

A large number of laws adopted in the past contain provisions which allow us to come to the conclusion that the Government of Canada has not always considered that the constitution required that the scope of business (*capacité*) of incorporated companies should be confined to the territory within the jurisdiction of the parliament or of the legislature which incorporated them.

Thus will be found appended to this report a list of Acts passed by the Canadian Parliament which in express terms give to the companies to which they relate the right of having agencies and branches abroad. Another list is also furnished of similar acts adopted by the Legislature of Quebec which have not been disallowed by the federal authorities.

Why should the government of Canada make this innovation and disallow laws which are but the reproduction of a legislation which goes back as far as the beginning of confederation? Why, at all events, should not the Minister of Justice, like his predecessors, leave the courts to decide as to the constitutionality of these laws?

The undersigned begs to point out in conclusion that should these Acts be disallowed, notwithstanding the rule constantly adhered to for over a quarter of a century, this action would create perturbation in the trade and would ruin a large number of capitalists in this province.

LOMER GOUIN,

Attorney General.

True copy,

JOS. DUMONT,

Under Secretary.

A list of the Trust Companies and Insurance Companies incorporated by the Dominion Parliament, and being empowered by their charter to carry on their business beyond the limits of Canada:—

42 Victoria—

Chapter 73, The North American Mutual Life Insurance Company.

45 Victoria—

Chapter 98, The North American Life Assurance Company.

Chapter 104, The St. Lawrence Maritime Insurance Company of Canada.

46 Victoria—

Chapter 86, The Grange Trust, Limited.

47 Victoria—

Chapter 89, The London Life Insurance Company.

Chapter 97, The Temperance and General Life Assurance Company of North America.

49 Victoria—

Chapter 93, The Tecumseh Insurance Company of Canada.

50-51 Victoria—

Chapter 103, The Equity Insurance Company.

Chapter 104, The Manufacturers' Life Insurance Company.

Chapter 105, The Manufacturers' Accident Insurance Company.

Chapter 106, The Canada Accident Assurance Company.

51 Victoria—

Chapter 96, The Eastern Assurance Company of Canada.

Chapter 97, The Keystone Fire Insurance Company.

52 Victoria—

Chapter 95, The Dominion Life Assurance Company.

54-55 Victoria—

Chapter 115, The Great West Life Assurance Company.

55-56 Victoria—

Chapter 69, The Victoria Life Insurance Company.

56 Victoria—

Chapter 81, The Ocean Accident Corporation.

Chapter 82, The Ocean Guarantee Corporation.

57-58 Victoria—

Chapter 115, The General Trust Corporation of Canada.

Chapter 118, The Canadian Railway Accident Insurance Company.

Chapter 119, The Canadian Railway Fire Insurance Company of Canada.

Chapter 122, The Northern Life Insurance Company of Canada.

58-59 Victoria—

Chapter 88, The Ontario Accident Insurance Company.

59 Victoria—

Chapter 50, The Imperial Life Assurance Company of Canada.

60-61 Victoria—

Chapter 77, The Methodist Trust Fire Insurance Company.

Chapter 78, The National Life Assurance Company of Canada.

Chapter 79, The North American Life Assurance Company.

Chapter 81, The Royal Victoria Life Insurance Company.

61 Victoria—

Chapter 103, The Federal Life Assurance Company of Canada.

Chapter 113, The Prudential Life Assurance Company.

62-63 Victoria—

Chapter 107, The Dominion Fire Insurance Company.

Chapter 117, The London and Canadian Loan and Agency Company, Limited.

1 Edward VII—

Chapter 93, The Century Life Insurance Company.

Chapter 105, The Temperance and General Life Assurance Company of North America.

Chapter 115, The United Empire Life Insurance Company.

2 Edward VII—

Chapter 102, The Sovereign Life Assurance Company of Canada.

Chapter 109, The Union Life Assurance Company.

3 Edward VII—

Chapter 118, The Empire Accident and Surety Company.

Chapter 132, The Canadian Agency.

Chapter 146, The Lumbermen's Fire Assurance.

Chapter 183, The Richmond and Drummond Fire Insurance Company.

4 Edward VII—

Chapter 57, The Canadian Credit Indemnity Company.

Chapter 96, The Monarch Life Assurance Company.

Chapter 110, The Ottawa Life Insurance Company.

4-5 Edward VII—

Chapter 74, The Canadian West Life Insurance Company.

Chapter 107, The Imperial Guarantee and Accident Insurance Company of Canada.

Chapter 159, The Sovereign Fire Insurance Company.

A list of the Insurance companies and Trust companies incorporated in the Province of Quebec, from 1867 to 1905, and whose sphere of action does not seem to be limited to the Province of Quebec:—

1875—39 Victoria—

Chapter 60, "An Act to incorporate the Patriotic Insurance Company of Canada."

1875—38 Victoria—

Chapter 81, "An Act to incorporate 'The Atlantic Insurance Company of Montreal'."

1899—62 Victoria—

Chapter 85, "An Act to incorporate the Provincial Trust and Agency Company."

1900—63 Victoria—

Chapter 91, "An Act to incorporate the Transit Insurance Company of Montreal, Canada."

1900—63 Victoria—

Chapter 89, "An Act to incorporate the Corporation Trust Company."

1900—63 Victoria—

Chapter 77, "An Act to further amend the charter of the Montreal Trust and Deposit Company, incorporated by 52 Victoria, chapter 72."

1900—63 Victoria—

Chapter 76, "An Act to amend the charter of the Royal Trust Company."

1903—3 Edward VII—

Chapter 121, "An Act to incorporate *L'Association nationale fiduciaire*."

1903—3 Edward VII—

Chapter 106, "An Act to incorporate *Le Crédit municipal canadien*" (The Canadian Municipal Trust Company).

1903—3 Edward VII—

Chapter 103, "An Act to incorporate the Empire Trust Company."

1903—3 Edward VII—

Chapter 102, "An Act to incorporate The Real Estate Title Guarantee and Trust Company."

1903—3 Edward VII—

Chapter 95, "An Act to incorporate *La Sauvegarde* Life Insurance Company."

1904—4 Edward VII—

Chapter 93, "An Act to amend *La Sauvegarde* Life Insurance Company."

1904—4 Edward VII—

Chapter 93, "An Act to incorporate The Toronto General Trust Corporation."

(Translation)

QUEBEC, June 6, 1906.

To the Honourable Secretary of State,
Ottawa.

SIR,—In reply to your despatch of the 1st instant, I have the honour to transmit to you, herewith inclosed, a certified copy of the report of my Attorney General.

I have the honour to be, sir,

Your obedient servant,

L. A. JETTE,
Lieutenant Governor.

(Translation)

REPORT on the reference of the Honourable the Provincial Secretary under date of 4th instant, respecting a despatch received from the Honourable the Secretary of State of Canada, dated the 1st instant.

The undersigned has the honour to report as follows:—

The undersigned has seen with regret that the Secretary of State reproaches the Government of the Province of Quebec with a lack of courtesy in not replying to certain despatches referred to in his communication.

The facts set forth in the memorandum of the Attorney General, dated the 1st of June, which was transmitted by the Lieutenant Governor of the province to the Secretary of State, show how unfounded these reproaches are. The undersigned is thoroughly satisfied that had the Secretary of State been aware of those facts, he would not have formulated in such terms as made use of in his despatch of the 1st of June.

LOMER GOUIN,
Attorney General.

Certified copy.

JOS. DUMONT,
Under Secretary.

6 EDWARD VII, 1906

(Approved 11 March, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd November, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of Quebec, passed in the sixth year of His Majesty's reign, 1906, and received by the Secretary of State for Canada on 20th March last; and he is of the opinion that these may be left to such operation as they may have, subject to the following comments:—

Chapter 12, intituled: "An Act to provide for a Tax on transfers of Shares, Bonds, Debentures or Debenture Stock."

By this Act the Act 5 Edward VII, c. 15, is repealed, and it is provided that in order to provide for the exigencies of the public service there shall be levied, in accordance with the rules in the statute set forth, a tax upon every change of ownership consequent upon the sale, transfer or assignment of shares, bonds, debentures or debenture stock issued by any corporation or company, made or carried into effect in the province, except upon the first issue of shares up to the sum of one million shares.

The tax is to be paid in money or in adhesive stamps, and is to be of the amount of two cents for every hundred dollars or fraction thereof of the par value of a share, bond, debentures or debenture stock, sold, transferred or assigned. It is provided that the stamps shall in all cases be supplied and affixed by the vendor, transferor, or assignor, unless the sale, transfer or assignment is effected through a broker, in which case, the broker is to affix the stamps, and may recover the costs thereof from the vendor, transferror or assignor.

The Lieutenant Governor is empowered to make regulations providing, among other things, that the tax may be paid in money in lieu of stamps.

The undersigned is not satisfied that the taxation authorized by this Act is direct taxation, but inasmuch as the question may be open to argument, and especially as Your Excellency refrained from exercising the power of disallowance with regard to the said Act, 5 Edward VII, chapter 15, which is now repealed, the undersigned does not recommend that this Act be disallowed. Any question which may arise with regard to its validity may be conveniently determined by the courts.

Chapter 15, intituled "An Act to amend the law respecting public lands."

By section 6 it is provided that all locomotive engines used on any railway which passes through any forest shall be provided with and have in use the most approved and efficient means to prevent the escape of fire or sparks from the furnace, ashpan or smokestack of such engine.

This provision may, no doubt, have its effect as to railways within the legislative authority of the province, but it can have no effect with regard to Dominion railways, and the undersigned presumes that it would be so construed by the courts, consequently he does not recommend disallowance.

Chapter 18, intituled "An Act to amend the Quebec Fishery Laws."

Section 9 provides a penalty against any person injuring or obstructing any fish-way, or doing anything to deter fish from entering or ascending the same, &c.

Section 13 provides a penalty against any person using dynamite or other explosive in catching fish.

These provisions relate to the regulation of the fisheries rather than to proprietary rights therein or any subject over which the legislature has jurisdiction, and the undersigned would recommend their disallowance were it not for the fact that the courts may conveniently give effect to the objection stated, and the Act contains many provisions no doubt necessary or useful in relation to matters competent to the legislature. He considers, therefore, that this Act may properly be left to such operation as it may have.

Chapter 74, intituled "An Act to amend the charter of the Imperial Trust Company."

By this Act the Act 5 Edward VII, chapter 79, is amended by the addition to section 3 of two paragraphs authorizing the company to receive money on deposit and allow interest on the same, and to purchase bills of exchange, and generally do an exchange business with Great Britain and Ireland, British possessions and foreign countries.

The undersigned does not admit that these powers may be conferred by the legislature. They are not improbably banking powers, which can only be conferred by parliament.

The undersigned does not, however, on that account recommend disallowance of the Act since these questions may be determined by the courts, and having called

attention to the doubt which exists as to the validity of these powers the company of course has the opportunity to come to parliament for confirmatory legislation.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his Government.

Humbly submitted;

A. B. AYLESWORTH,
Minister of Justice,

7 EDWARD VII, 1907

(Approved 21 May, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 7th January, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of Quebec, passed in the Seventh year of His Majesty's reign, 1907, and received by the Secretary of State for Canada on 23rd of May last, and he has the honour to report thereon as follows:—

Chapter 42, intituled "An Act respecting the Observance of Sunday."

In recommending this Act to be left to such operation as it may have, the undersigned refrains from expressing any opinion as to the authority of the legislature to enact it. This statute, among other provisions, forbids the doing of certain acts, or the carrying on of certain business, on Sunday, and provides penalties. It is quite possible that such legislation falls within the exclusive legislative jurisdiction of Parliament as affecting the criminal law or is, in the present circumstances, incompetent to a provincial legislature in view of the Dominion Lord's Day Act. The undersigned considers however that the courts may properly determine any question which may arise with regard to the validity of this provincial statute.

Chapter 48, intituled "An Act respecting the incorporation of joint stock Companies by Letters Patent."

By section 13 it is provided that any company incorporated under any general or special Act of any of the other provinces of Canada for any of the purposes or objects for which letters patent may be issued under this Act, and being at the time of the application, a subsisting and valid corporation, may apply for letters patent under this Act, and that the Lieutenant Governor may thereupon issue letters patent incorporating the shareholders of the Company so applying as a company under this Act, and that thereupon all the rights and obligations of the former company shall be transferred to the new company, and that all proceedings may be continued or commenced by or against the new Company that might have been continued or commenced by or against the old company.

Although it is, in the opinion of the undersigned incompetent to the legislature of Quebec to authorize a company incorporated for provincial objects by any other province to apply for letters patent to incorporate its shareholders as a company for the province of Quebec, the undersigned does not doubt the power of the legislature of Quebec to incorporate the shareholders of an existing company as a new company for local purposes, but such new corporation could never be other than an entirely distinct and different company from the original company. To transfer to such new company the rights and obligations of the original company unless with the unanimous assent of its shareholders and of its creditors, or those interested in the enforcement or preservation of such obligations, might be to destroy the civil rights of all persons interested in the original company, or with whom it had existing dealings.

A company incorporated for provincial purposes within a province is within the exclusive jurisdiction of the incorporating province, and not subject to the authority of the legislature of another province. Consequently, in the opinion of the undersigned, the legislation now in question, in so far as it is intended to confer powers upon or affect the constitution of a company incorporated by any province other than Quebec, is plainly *ultra vires*.

The undersigned considers therefore that the said section 13 should be repealed or amended by striking out the provision authorizing a company incorporated by another province to apply to the Government of Quebec for incorporation of its shareholders in Quebec, and by striking out the provision with regard to the transfer of the rights and obligations of the former company to the new company, the continuing of proceedings against the new company, and generally such provisions as contemplate the substitution of the new company for the old.

In the meantime it is of course competent to the courts to give effect to the objections herein stated in any case where they arise.

Chapter 89, intituled "An Act respecting the Gaspesian Railway Company."

This statute incorporates a railway company, and authorizes the company to lay out, construct and operate a railway as follows: "Commencing at or near Paspebiac; thence through the county of Bonaventure, not further north than Casapséal or further south than Cross Point; proceeding thence to the boundary of the Province of Quebec, in the direction of Edmundston or Grand Falls, or to the boundary of the Province of Quebec in a direction between these two places, or to the boundary of the Province of Quebec in the direction of the St. John River, in the Province of New Brunswick.

"The said railway shall be commenced before the year 1909, and shall be completed and put into operation before the year 1912. It is expressly stipulated, however, that the company shall not have any stations or stopping places for the purposes of traffic or passengers or for any purpose whatsoever, other than the taking of coal and water between Metapedia and New Carlisle.

"The section extending from Metapedia to Edmundston, or to Grand Falls, or to St. John River, in the Province of New Brunswick must be constructed and in operation before the company shall be allowed to run its trains between Metapedia and New Carlisle, but even after the section from Metapedia to Edmundston or to Grand Falls or to the St. John River, in the Province of New Brunswick is constructed and in operation, the company shall not have the power to stop its trains between Metapedia and New Carlisle except for the taking of coal and water."

The undersigned cannot construe this provision otherwise than as contemplating and purporting to authorize the construction and operation of a railway from the Province of Quebec into the Province of New Brunswick, either connecting the two provinces or extending beyond the limits of Quebec. In either case the statute as it stands is *ultra vires* of the local legislature. The undersigned has, however, communicated with the Attorney General of Quebec, and has ascertained that he shares the view that the statute must be regarded as ineffective in so far as it authorizes the railway to connect two provinces or to extend beyond the limits of Quebec. The Attorney General of Quebec accordingly undertakes to promote an amendment to this Act at the next session of the legislature limiting the powers of the Company to the Province of Quebec. In these circumstances the undersigned refrains from recommending disallowance.

The undersigned therefore recommends that the said statutes be left to such operation as they may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice

8 EDWARD VII, 1908

(Approved 16 November, 1908)

DEPARTMENT OF JUSTICE, OTTAWA, 9th October, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of Quebec, passed in the eighth year of His Majesty's reign (1908), received by the Secretary of State for Canada on 8th May last, and is of opinion that these statutes may be left to such operation as they may have.

The undersigned desires to remark, however, as to Chapter 69, intituled: "An Act respecting Insurance Companies, Mutual Benefit Societies and Charitable Associations, in the Province of Quebec," that the provisions, such as section 85, which are intended to authorize insurance companies and associations incorporated by other provinces to carry on business within the Province of Quebec are of very questionable validity, and the undersigned does not admit that it is within the power of the Legislature of Quebec to enlarge the powers of a local company incorporated in another province. Since, however, the undersigned proposes to recommend a reference to the courts of questions touching the legislative authority of the provinces with respect to the constitution of companies, and since the objection herein stated may be conveniently determined by the courts, he does not consider it necessary to recommend any further action with regard to this statute.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

9 EDWARD VII, 1909

(Approved 21 January, 1910)

DEPARTMENT OF JUSTICE, OTTAWA, 7th January, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec, passed in the ninth year of His Majesty's reign (1909), and received by the Secretary of State for Canada on the 9th June, 1909, and he is of opinion that these statutes may be left to their operation except as hereinafter otherwise recommended.

Chapter 115—intituled "An Act to amend the Charter of the Montreal Trust and Deposit Company."

Section 8 provides that the Company may receive money on deposits and allow interest on the same.

Chapter 117—intituled "An Act to incorporate Le Credit General."

Section 2, paragraph (f) provides that the Company may receive money on deposit and make such money bear interest.

Chapter 118—intituled "An Act to incorporate the Crown Trust Company."

Section 3, paragraphs 19 and 21, provides that the Company may receive money on deposits and allow interest on the same; purchase bills of exchange, and generally do an exchange business with other British countries and with foreign countries.

These provisions appear to the undersigned to infringe the exclusive powers of Parliament with regard to *banking*, which as held by the Judicial Committee of the Privy Council in *Tenant vs. Union Bank*, 1893, Appeal Cases, at page 46, is "an expression which is large enough to embrace every transaction coming within the legitimate business of a banker."

The receiving by a company of the money of others on general deposit or at interest to form a joint fund which may be used by the company for its own benefit, or for the purpose of making temporary loans and discounts, or of dealing in notes or bills of exchange, is in the view of the undersigned a transaction especially connected with banking, and therefore *ultra vires* of a provincial legislature to authorize.

The undersigned is therefore, as at present advised, not satisfied that the enactments mentioned should be allowed to stand, and he recommends that inquiry be made of the local Government as to the grounds, if any, upon which, in their view, these provisions may be sustained as competent to the legislature, also as to whether the Government would undertake for the repeal of these clauses within the time limited for disallowance.

Chapter 116—intituled "An Act to authorize The Eastern Trust Company to do business in the Province of Quebec."

It is recited that this Company was incorporated by an Act of the Parliament of Canada, 56 Victoria, Chapter 84, amended by 62-63 Victoria, Chapter 110, and by 7 & 8 Edward VII, Chapter 103, with its head office at Halifax, Nova Scotia. The statute proceeds to enact that the chief office of the Company for the Province of Quebec shall be in the City of Montreal, and to confer upon the Company various enumerated powers.

The undersigned does not propose at present to consider whether these powers are intended to be consistent with or to modify or enlarge the powers conferred by the Dominion statutes incorporating and defining the powers of the Company. The objection to the legislation consists in the fact that the legislature of Quebec is proposing to legislate so as to affect the constitution of a company subject to the exclusive legislative authority of Parliament. The undersigned conceives that this is not within the powers of the legislature, and he recommends that the same course be followed with regard to this statute as is hereinbefore recommended with regard to the statutes which profess to confer banking powers.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his Government, and that he be requested to furnish the information required at his earliest convenience.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

1 GEORGE V, 1910

(Approved 10 March, 1911)

DEPARTMENT OF JUSTICE, OTTAWA; 12th January, 1911.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec, passed in the first year of His Majesty's reign (1910); and received by the Secretary of State for Canada on 10th June, 1910; and he is of opinion that these Acts may be left to such operation as they may have, with the exception of

Chapter 82, intituled "An Act to amend the Charter of the General Trust."

The General Trust was incorporated by a statute of Quebec, 9 Edward VII, Chapter 117, and by the Act of incorporation large powers are conferred upon the company to carry on the business of trustees, money-lending, dealing in property, real and personal, receiving deposits at interest, investing moneys, issuing debentures, etc.

The undersigned in his report of 7th January last upon the Quebec Statutes of 1909 commented upon the said Chapter 117, among others, as infringing upon the exclusive powers of Parliament with regard to banking. Upon communication of the said report to the local Government the Attorney General submitted an argument in reply urging that the powers questioned did not "embrace those transactions which differentiate banking from business of other kinds," and he submitted that "the business of banking as distinguished from business of other kinds is the receipt of money from or on account of a customer to be repaid on demand, or when drawn or by cheque." The Attorney General concluded that inasmuch as none of these powers were conferred upon the Company the legislation was not in excess of provincial authority.

The undersigned upon further consideration of the matter adhered to the opinion that the essential qualities of banking were more extensive than as stated by the Attorney General, but the undersigned in the circumstances refrained from making a further recommendation, and so the Act remains in force.

Now by the said Chapter 82 of the last session of the legislature the original Act is amended by changing the name and further defining the powers of the Company. As to the powers it may be observed that they are enlarged in respect of what may be regarded as banking business by the granting of authority "to purchase bills of exchange, and generally do an exchange business with other British countries and with foreign countries."

By re-enactment among the powers which this company is intended to exercise are the powers to lend money to individuals repayable at long or short terms, and to receive money upon deposit. It is provided nevertheless that the Company shall not lend on the security of bills of exchange or promissory notes. These powers in connection with the dealing in exchange seem to include powers attributed distinctively to the banks. It is not necessary to urge that the banking powers which by the British North America Act are excluded from provincial authority are commensurate with those which have been validly conferred upon the banks by Parliament. There are powers which in any classification of corporate powers would be referred to the subject of banking exclusively. There are other powers which, although relating to banking, may be indeterminate and partake of the general aspect or purpose of the legislation in which they are grouped. The powers in question are not of the latter class. The nature of the business of bankers is part of the law merchant and is judicially noticed. If from this business as so recognized be excluded the authority to receive money on deposit, to lend money to individuals except upon the security of bills of exchange, and generally to do an exchange business, the undersigned apprehends that the peculiar business of banking would be not only affected, but very considerably diminished. Yet these very powers are in terms sought to be conferred by the present Act. Even subject to the extreme limitation by which the Attorney General would confine the strict business of banking, the undersigned is unable to perceive that "the receipt of money from or on account of a customer to be repaid on demand, or when drawn, or by cheque," would be in excess of a power competently conferred to receive money on deposit.

It appears to the undersigned, therefore, that these powers, taken separately or in combination, infringe upon the subject of banking under any fair interpretation of the word.

While the undersigned considers that he would be justified in recommending the disallowance of the amending Act on account of its relation to banking, there is another objection which becomes the more serious when regarded in the light of the powers which this company is intended to have.

By the amending Act the title of the Company is changed by the addition of the words "of Canada," so that the Company is to be known as *The General Trust of Canada*, or *Le Crédit General du Canada*.

Section 12 of the Act of 1909, which provided that the Company may do business in the Province of Quebec, and for that purpose establish branches wherever they may be determined upon in accordance with the provisions of the Act, is repealed and a section substituted which, while authorizing the company to establish branches wherever they may be determined upon, omits the reference to the Province of Quebec. This amendment has, therefore, evidently been made with no other intention than to empower the Company to establish branches and carry on business, not only within, but also outside of the province of Quebec—a power which can be conferred only by the Parliament. The addition of the words "of Canada" to the title of the Company is consistent with the same intention, and it enables the Company to represent by its corporate name, as well as by the terms in which its powers are conferred, that the Company is authorized to carry on a general business throughout Canada in relation to the various enumerated powers, including those which, in the view of the undersigned, relate to banking.

The Act as amended is plainly one which could be validly enacted by the Parliament. It is, in the opinion of the undersigned, also clear that the Act as amended exceeds the constitutional power to incorporate companies with provincial objects.

In 1875 the Government considered upon the advice of Mr. Blake, a distinguished predecessor in office of the undersigned, that certain provincial Acts incorporating insurance companies with general powers ought to be disallowed unless amended so as to expressly limit their operation locally. The undersigned, while he acquiesces in the propriety of this view, is aware that it has not been very generally enforced, because of the consideration that in the absence of words to indicate a contrary intention the courts would interpret provincial legislation as intended to operate only within the local sphere of provincial powers; but the general rule has been the very opposite in the cases of provincial Acts which, as in the present case, manifest a necessary intention to empower provincial companies to carry on business beyond the limits of the incorporating province.

The effect of the disallowance of the amending Act would probably be to revive the provisions of Chapter 117, thereby repealed, and therefore in considering the amendments which should now be made in order to remove the objections stated, the undersigned cannot advise that Your Excellency's Government is in a position to stipulate for the repeal of any provision which is common to both Acts. The enactments intended to enlarge the local sphere of the Company's operation are, however, new; so also is the provision with regard to dealing in exchange; and the undersigned therefore recommends that inquiry be made of the Lieutenant Governor of Quebec as to whether his Government will undertake to have the said Chapter 82 amended within the time limited for disallowance by striking out the reference to Canada in the corporate name of the company, by repealing paragraph (c) of section 2, and by restoring section 12 as it stood in the Act of 1909.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 31 May, 1911.)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd May, 1911.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 12th January last, approved by Your Excellency in Council on 10th March, with respect to Chapter 82 of the Statutes of Quebec, 1910, intituled "An Act to amend the Charter of the General Trust," has the honour to state that the Lieutenant Governor of Quebec by despatch of 19th instant sends copy of an Order of his Executive Council directing copy of a memorandum of the Acting Attorney General of Quebec of 17th May to be transmitted in reply to the said report of the undersigned of 12th January. The Acting Attorney General is of opinion that no undertaking should be given for the amendments suggested by the undersigned.

In consequence the undersigned regrets that there remains no other course than to recommend the disallowance of the Act.

The Acting Attorney General considers at some length the authority of the legislature to enact paragraph (o) of section 2 and section 3 of the amending Act, but he fails, in so far as the undersigned is able to appreciate the argument, to answer the objections stated in the report of the undersigned.

The amending statute re-enacts the powers which were defined by the Act of 1909 with additions, including the power to purchase bills of exchange and generally to do an exchange business with British and Foreign countries. It repeals the limitation enacted by the Act of 1909, by which the business of the Company was to be confined to Quebec, and it adds to the corporate name of the Company the words "of Canada". It was in respect of the combination of powers so enacted as relating to the business of banking that the undersigned concluded that the Act as amended could not properly be allowed to stand.

The undersigned stated in his report of 7th January, 1910, upon the original Act that the provisions authorizing the Company to receive money on deposit at interest appeared to infringe the exclusive power of Parliament with regard to banking, but that comment was not followed by a recommendation for disallowance. The legislature proceeded at the next session to re-enact and enlarge the powers of the Company and the question presented by the amending Act affects not only the validity of the grant of powers as to the receiving of money upon deposit, but also the powers as enlarged.

The Acting Attorney General reverts to the definition of banking adopted by the Attorney General in his report upon the Act of 1909, which is "the receipt of money from or on account of a customer to be repaid on demand or when drawn on by cheque", and he stated that this definition is based on very high authority. While as stated by the undersigned in his report of 12th January even this very limited definition appears sufficient to exclude the authority of a provincial legislature to confer the power to receive money on deposit at interest, it may be worth while, considering the issues now involved, to inquire into the foundation of the Attorney General's definition. It rests solely upon a paragraph in Sir John R. Paget's article on *Bankers and Banking*, published in Volume 1 of Halsbury's Laws of England, page 568. The paragraph falls under Part 1 of the article entitled Definitions, and it is as follows: "The business of banking, strictly speaking, is the receipt of money from or on account of a customer to be paid on demand or when drawn on by cheque. In the case of banks lawfully issuing bank notes such issue is a part of banking business". The authority cited by the author is *Foley vs. Hill*, 2 H.L.C. at p. 43. This decision was concerned with the particular facts of the case and did not profess to determine anything beyond the matter in issue. It was sought to recover from a banker the amount of a customer's account consisting of a few simple items. The proceedings were instituted by bill in equity praying an account, and the only point decided was that the action should be at law for money had and received, and that

it was not a case for the exercise of the Chancellor's jurisdiction, the relation between banker and customer being the ordinary one of debtor and creditor, with the further obligation arising out of the custom of bankers to honour the customer's drafts. Lord Brougham in considering whether the banker stood in the relation of trustee or principal to the customer, said: "I see no ground for contending that there is any identity in those two points. I am now speaking of the common position of a banker, which consists of the common case of receiving money from his customer on condition of paying it back when asked for, or when drawn upon, or of receiving money from other parties to the credit of the customer, upon like conditions to be drawn out by the customer, or, in common parlance, the money being repaid when asked for, because the party who receives the money has the use of it as his own, and in the use of which his trade consists, and but for which no banker could exist, especially a banker who pays interest."

Nothing can be more obvious than that this statement of Lord Brougham is intended to be taken *secundum subjectam materiam* and with no intention to state or define comprehensively the essential qualities of banking business. He decides merely that a banker in respect of an ordinary deposit of money for a customer's account is not a trustee for the customer and that such deposits are repayable on demand.

The receiving of money upon deposit and the lending of money at interest are important features of banking; and doubtless, as Lord Brougham observes, a banker who does not receive interest could not afford to pay interest, but the statement of these two powers does not by any means constitute an adequate description of the whole business of a banker.

The expression "Banking" as used in section 91 of "The British North America Act, 1867" is in the opinion of the undersigned intended to describe not only such powers as are inherently banking powers, but also those which were, under the laws of the provinces at the time of the Union, exercised by the banks in the carrying on of their business, and it includes everything within legitimate banking business as it is practised or has been developed. It may be seen by reference to pre-union legislation that the deposit of money at interest and dealing in exchange were expressly authorized banking transactions in the provinces. Leading decisions in the United States also show that such powers are attributed to the banks in that country, in fact it seems impossible to suppose that these powers are not necessarily common to all well ordered banking systems.

The fact that before the enactment of "The British North America Act, 1867," as well as since, private bankers have engaged in the business of exchange, or, which is equally true, in the receiving of customer's money upon deposit, does not make this sort of business any the less banking, or remove it from the legislative authority of parliament; nor does this fact affect the question as to whether these powers may be competently conferred by the local legislatures.

The argument of the Acting Attorney General appears to suggest the view that the legislature by progressive steps year by year may build up a group of powers which however objectionable as a whole should only be considered in respect of the latest particular and not in combination. If this view be conceded it might be anticipated that at another sitting of the legislature the clause prohibiting the lending of money on security of bills of exchange or promissory notes would be repealed, and thus this company would become not only a bank of deposit and exchange, but also a bank of discount. In fact the undersigned does not perceive in what respect the powers of this company can now be enlarged for the purpose of enabling it to compete with the banks in all transactions, except by the removal of the disqualification as to the discounting of bills and notes, and by the grant of power to issue paper money.

The attempt, whether effective or not, to extend the area of the Company's operations and to give the Company a name indicative of the extended area serves to create opportunity for further confusion.

The undersigned entertains no doubt that the said Act, Chapter 82 of 1910 intituled "An Act to amend the Charter of the General Trust" should be disallowed, and he humbly so recommends.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(The Statute was accordingly disallowed on the Thirty-first day of May, 1911.)

1 GEORGE V, 1911

(Approved 20 February, 1912)

DEPARTMENT OF JUSTICE, OTTAWA, 12th February, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of Quebec, passed in the first year of His Majesty's reign (1911, second session), and received by the Secretary of State for Canada on 3rd April last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following remarks as to Chapter 94, intituled: "An Act to authorize The National Trusts Company to do business in the Province of Quebec."

This statute recites that the company was incorporated by Act of the legislature of Manitoba, and that since its incorporation it has carried on the business of a trust company in the Province of Manitoba, and elsewhere, and has been regularly empowered to do business in the provinces of Ontario, Saskatchewan, Alberta and British Columbia. The statute proceeds to enact that the company is authorized to do business in the Province of Quebec, with head office for the province in the City of Montreal, and to define the powers of the company within the province. Attention has on previous occasions been directed to similar statutes by the predecessors in office of the undersigned, and the authority of a legislature has been questioned to enlarge the scope of the powers of a company incorporated with provincial objects by another provincial legislature. Companies so incorporated are within the exclusive jurisdiction of the incorporating legislature. The power to incorporate a company to carry on business throughout the Dominion rests exclusively with the Parliament of Canada, and it appears, therefore, to the undersigned very doubtful at least whether the legislatures by action singly or combined can extend the powers of a local company beyond the province within which it is incorporated, or authorize it to compete generally with companies incorporated by Parliament in the execution of its exclusive authority. The question may, however, be conveniently determined by the courts, and the undersigned, following the practice in previous cases, does not consider that it is necessary to disallow the Act.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

2 GEORGE V, 1912

(Approved 25 November, 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of Quebec, passed in the second year of His Majesty's reign (1912) received by the Secretary of State for Canada on 8th April last; and he is of opinion that these may be left to such operation as they may have except as hereinafter otherwise recommended.

Chapter 102, intituled "An Act to amend the charter of the *Crédit Général* (General Trust)".

This Act in respect of all its questionable features is, with a single exception, substantially the same in effect as Chapter 82 of 1910 which was disallowed by Order in Council of 31st May, 1911, for the reasons stated in Sir Allen Aylesworth's report of 12th January, 1911. It is true that the present statute does not, as its predecessor did, enable the Company to deal in exchange; therefore it does not perhaps trespass upon the subject of banking to a greater extent than the original enactment which was permitted to stand. Nevertheless the repeal of the limitation by which the business of the Company was confined to the Province of Quebec, and the enlargement of the name of the Company so as to make it descriptive of Canadian as distinguished from provincial business, considered especially in relation to the character of the powers conferred upon the company, afforded reasons sufficient in the opinion of the Government of the time, for the disallowance of the Act of 1910, and consistently with that view it would seem that this Act should be in like manner disallowed, unless amended by restoring the former title of the Company and the restriction to provincial objects provided by the original Act. The undersigned recommends, therefore, that the provincial government be asked to consider the suggestion to make such an amendment.

Chapter 104, intituled "An Act to authorize the Dominion Trust Company, Limited, to do business in the Province of Quebec."

By this statute attempt is made to enlarge the powers of a Company incorporated under the provisions of the British Columbia Companies Act, 1897, so as to confer upon the Company certain powers enumerated in the Act which may be exercised in the Province of Quebec. It has been pointed out not infrequently in connection with similar legislation by predecessors in office of the undersigned that grave doubts exist as to the power of a local legislature to authorize the extension of business of a Company incorporated by another province, and the undersigned upon a recent occasion expressed his concurrence in those doubts. He considers, however, that following the course which was adopted in previous cases this Act may be left to its operation, and that the questions suggested may be determined by the Courts.

Chapter 106, intituled "An Act to enlarge and confirm the corporate powers, within the Province of Quebec, of the 'Prudential Trust Company, Limited'".

This Act recites that the Prudential Trust Company, Limited, was incorporated by special Act of the Parliament of Canada, 8-9 Edward VII, Chapter 124, that the Company has carried on business as a trust company within the Province of Quebec, and elsewhere, and desires to have its corporate powers enlarged and confirmed. The Act proceeds to confer upon the Company powers distinct or stated in different terms from those which were granted by Parliament.

The undersigned is not disposed to deny that it is competent to the legislature to remove any impediment, if such can possibly exist under the local laws, to the exercise of powers conferred by Parliament, but it does not in his opinion admit of argument to the contrary that a local legislature cannot enlarge or diminish the constitutional

powers of a Dominion company. The legislative authority of the province, therefore, does not extend to any of the provisions intended to be sanctioned by this Act which profess to confer upon the Company powers not granted by Parliament.

The undersigned accordingly considers that the Act should be amended by repealing those provisions which are intended to enlarge the corporate capacity of the Company, or by the enactment of a proviso disclaiming any intent to affect its corporate powers.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, and that he be requested to express at an early date the intention of his Government with respect to the said Chapters 102 and 104.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

3 GEORGE V, 1912 (2nd Sess.)

(Approved 9 January, 1914)

DEPARTMENT OF JUSTICE, OTTAWA, 26th September, 1913.

To His Excellency The Administrator of the Government in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Quebec, passed in the Third year of His Majesty's reign (1912), and received by the Secretary of State of Canada on 10th January last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following remarks:—

Chapter 44, intituled "An Act respecting Trust Companies."

The words "extra-provincial trust company" are defined for the purposes of this Act to mean a trust company incorporated in virtue of the laws of the Dominion of Canada or of some province of Canada other than the Province of Quebec.

It is provided that no trust company shall carry on trust business in the Province of Quebec unless it is registered in the office of the Provincial Treasurer in accordance with the Act. Certain trust companies only are declared to be eligible for registration, among others, "extra-provincial trust companies that issue permanent stock only and have a subscribed capital stock of at least \$500,000 of which at least \$100,000 has been paid up."

It is provided that before the issue of a certificate of registration a trust company must submit attested statements of its affairs, and such evidence as may be required by the Provincial Treasurer with regard to its financial condition. Moreover it is enacted that no company shall be registered under the same name as that of a company already registered, or so resembling it as to be likely to be confounded with it, or under any other name which may, in the opinion of the Provincial Treasurer, be misleading.

Power is given to the Lieutenant Governor in Council to suspend or cancel any certificate of registration, and trust companies so suspended are prohibited from carrying on business within the province.

Finally it is provided that registered companies shall be subject to inspection under the Act, and that registration may be cancelled upon the inspector's report.

These provisions in their application to Dominion companies, for reasons which have been frequently stated by the undersigned or his predecessors in office appear to be *ultra vires* as limiting the exercise of powers competently granted by the Parliament of Canada. Inasmuch, however, as questions touching the distribution of

powers with respect to companies are now pending in the courts the decision of which will it is hoped determine the objections to this legislation, the undersigned does not recommend disallowance.

Chapter 62, intituled "An Act to amend the charter of the town of St. Lambert."

Section 36 of this statute professes to authorize the town of St. Lambert to acquire and make collecting sewers and drains within the limits of the town at the place or places where they connect with those of other municipalities or to the River St. Lawrence, as may be necessary to provide the town with sufficient means of sewerage and drainage.

It is objected on behalf of the Harbour Commissioners of Montreal that this legislation grants to the Town of St. Lambert a title to the servitude or right to empty its collecting sewer into the harbour of Montreal, and that it is therefore *ultra vires*.

The undersigned does not doubt that legislation relating to public harbours is incompetent to a local legislature, but it does not appear that the provision in question necessarily affects the harbour of Montreal. Any unauthorized obstruction, pollution of or interference with the waters of the harbour might, however, be restrained at the instance of the Harbour Commissioners, and the undersigned does not consider that it is necessary or advisable to disallow the Act, which appears to contain many very important provisions.

Chapter 66, intituled "An Act to amend the Charter of the Town of St. Jerome."

Objection has been made to this Act on behalf of the St. Jerome Power and Electric Light Company in so far as it ratifies certain by-laws of the Town Council, and it is said that the ratification of these by-laws is prejudicial and unjust to the Company. Upon submitting the objections to the Lieutenant Governor he reports that this is municipal legislation within the authority of the legislature, and maintains the authority of his Government. It may be observed that the application for disallowance does not proceed upon any alleged absence of enacting authority in the legislature, but in the terms of the complaint, upon the ground that the legislation is a gross violation of vested interests; and while, in the opinion of the undersigned, such a charge, if established, would not be an inappropriate ground for disallowance, he is not satisfied that the circumstances of this case are such as to justify a recommendation to disallow, and it may be observed that the statute appears to contain a number of important provisions which are not questioned.

Chapter 91, intituled "An Act to authorize Dominion Trust Company to do business in the Province of Quebec."

Chapter 92, intituled "An Act respecting the 'Donnacona Paper Company, Limited'."

The undersigned questions the authority of the legislature to interfere with the constitution of a Dominion company, or a company constituted by the legislature of another province. Companies of the former class may execute their powers throughout Canada by virtue of Dominion grant, and companies of the latter class are, in the view of the undersigned, locally limited. The undersigned does not consider, however, that the legislation in question is likely to do harm, and the questions affecting it will probably be considered in pending cases.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

4 GEORGE V, 1913-14

(Approved 21 November, 1914.)

DEPARTMENT OF JUSTICE, OTTAWA, 16th November, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec, passed in the third and fourth years of His Majesty's reign (1913-14); received by the Secretary of State for Canada on 2nd March last, and he is of opinion that these statutes may be left to such operation as they may have.

Chapter 117, intituled "An Act to change the name and amend the charter of La Societe de Construction Permanent de Quebec, and to incorporate it under the name of Le-Pret Hypothecaire" is subject to the objection that some of the powers which it professes to confer upon the society thereby incorporated are in the nature of banking powers, as for instance, the power to receive money upon deposit. If, however, the company should attempt to engage in banking business the courts would afford a convenient remedy. Seeing that the powers conferred upon the society are, speaking generally, competent to the province, the undersigned does not advise disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

5 GEORGE V, 1915

(Approved 8 January, 1916.)

21st January, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec, passed in the Fifth year of His Majesty's reign (1915); received by the Secretary of State for Canada on 22nd March, 1915, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

C. J. DOHERTY,
Minister of Justice.

CHINESE CONSULATE GENERAL FOR CANADA, OTTAWA, 19th October, 1915.

SIR,—I have the honour to enclose you the copy of an Act relating to the Public Laundries in the Province of Quebec. As the Act is indirectly and intentionally directed against the interest of the Chinese community in that province, I feel it is my duty to draw your attention to the effect that it should be amended during the

next session in such a manner as to meet their desire with favourable conditions. Last December the Canadian Laundry Association advertised in the News-paper that they raised seven thousand dollars to drive the Chinese Laundries out of Montreal. The Act then ensued in the spring. I must remind you that the Chinese Laborers (including launderers) have each to pay an admission fee of five hundred dollars when first entering the Dominion of Canada. In addition to that fifty dollars laundry city license fee was forced to be paid every year by them some years ago till now. This year another tax of fifty five dollars was imposed upon them. You must know that few of these laundries are run by four or five persons but most of them run by from one to three. A little reflection will convince you that how can a small hand working business like this bear such a big outlay every year as the above stated sum. Although the law might permit the enactment of the Act, yet it seems to me more tyrannical than reason and justice.

Therefore the Chinese community in the Province of Quebec requested me to bring the matter to your best attention that if you can advise the Provincial Government to introduce an amendment of the said Act into the Provincial Parliament during the next session for better and favourable conditions towards them.

I, herewith, enclose you for your perusal the copy of a letter which I have addressed to the Provincial Government of Quebec some time ago on the same subject.

I have the honour to be, Sir,

Your obedient servant,

YANG SHU WEN,

Consul-General.

Enclosures.

Right Hon. Sir ROBERT L. BORDEN,
The Premier,
Ottawa, Canada.

5 GEORGE V, 1915, CHAPTER 22

CHINESE CONSULATE GENERAL FOR CANADA, OTTAWA, February 15, 1915.

The Hon. W. MITCHELL,
Treasurer of the Province of Quebec,
Quebec, P.Q.

SIR,—I have the honour to inform you that during our conversation in your office the last time, you insisted upon me to give you a strong argument as to the Bill No. 40, which you have introduced into the House to be passed, on the subject of imposition of tax of \$50 on public laundries every year. You are of the opinion that there is no mercy for everybody in dealing with public affairs. I quite agree with you to that point, although so, yet I am sure that there is justice in all matters, which is always valued and can never be conquered by any might or unfairness which would be played on one race of people than that of the others against the sense of British fair play.

I carefully read the Bill in which I noticed that the tax is intentionally directed to be imposed on the Chinese laundries only, because you exempt the laundries and the incorporation companies, which have paid a corporation tax. A little reflection will convince you that there is scarcely a law, which is only applied to one sex, and that the incorporation tax is not a laundry tax at all.

One thing I cannot see clear is that, why the laundries, which are a line of business mostly run by Chinese, have to pay such an unbearable high tax as \$50 without reasonable proportion to their income, and I cannot see why the tailors, the barbers, etc., are not taxed as you have told me that you want to raise the funds of the Treasury.

As to the point of view in regard to the welfare of the public, a high tax upon a laundry is against the principle of economy. This is only to handicap the Chinese laundries to compete with their fellowship.

You have argued with me that in a laundry which is run by four Chinese they would not pay more than 25c each every week, but you did not take it into consideration that there are about one hundred persons in one Canadian incorporated laundry, which ought to pay a sum proportional to that which is paid by one Chinese laundry run by four persons yet the Canadian incorporated laundry would not pay a cent for the tax.

You have argued with me that you want the Chinese to pay a tax to the Treasury of the Province of Quebec, but I am of the opinion that this is not the constitutional law of the Dominion of Canada, because the meaning of the law is that people of all nationalities must be looked alike, but not against one.

From the above points of view, the Chinese community in the Province of Quebec further requested me to lodge a formal protest against the Bill for its withdrawal, and I hope you will be good enough to reconsider the case, and give a satisfactory review on it.

I have the honour to be, Sir,

Your obedient servant,

YANG SHU WEN,

Chinese Consul-General.

6 GEORGE V, 1916

(Approved 15 February, 1917.)

5th February, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec for 1916, received by the Secretary of State for Canada on the 28th March last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

7 GEORGE V, 1916 (2 Sess.)

(Approved 4 January, 1918.)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 18th December, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec for 1916, (Second Session), received by the Secretary of State for Canada on the 25th January last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

8 GEORGE V, 1917-1918

No report was made on these statutes.

9 GEORGE V, 1919

(Approved 23 October, 1920)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 16th October, 1920.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of Quebec, passed in the last Session, 1919, and in the ninth year of His Majesty's reign, and received by the Secretary of State for Canada on the 24th day of October, 1919, and he is of the opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

10 GEORGE V, 1920

(Approved 21 February, 1921)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 10th February, 1921.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Quebec, passed at its last session, 1920, and received by the Secretary of State for Canada on 6th March last, and he is of opinion that these statutes may be left to such operation as they may have.

As to Chapter 79, intituled "An Act respecting the organization and competence of courts of civil jurisdiction and the procedure in certain cases," it is objected by one of the advocates of the Province that Article 495 of the Code of Civil Procedure, as enacted by Section 6 is *ultra vires*. He states that this article "seems to me to go beyond what a legislative body should grant to any court or body of judges no matter what might be their sense of rectitude. The clause looks from a casual glance to be a granting away to a court the power of a legislative body to make laws when the institution in its very nature is not intended to create but administer laws as enacted by the legislature.

"To my way of thinking when we consider that such court is so often called upon to administer laws between foreigners, or people from other Provinces of the Dominion which come in conflict with the residents of the Province of Quebec, or even the Province itself, that it is likely to affect so many varying interests, and some time create remedies suggested by prejudice if such can be propagated in hon. judges that the clause should be vetoed by His Excellency in Council."

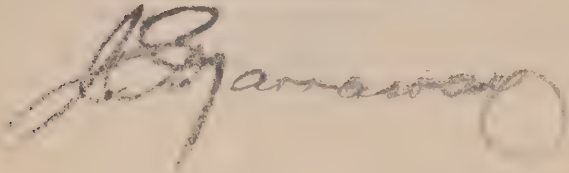
The undersigned considers that this is a mere regulation of procedure enabling the court to apply any remedy which is within its jurisdiction, although not specifically pleaded, and while perhaps it may be questionable whether the court ought to be empowered to grant relief differing in kind or extent from that which is claimed, the question is certainly to be resolved by the legislature; moreover, the undersigned does not interpret the enactment as authorizing the court to create remedies or assume any jurisdiction which it does not inherently possess.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

A handwritten signature in dark ink, appearing to read "A. B. Ryan". The signature is fluid and cursive, with a large initial "A" and "B" and a long, sweeping tail that loops around.

NOVA SCOTIA

59th VICTORIA, 1896

2ND SESSION—31ST GENERAL ASSEMBLY

(Approved 19 November, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 30th September, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his Report on Chapter 17 of the Statutes of the Province of Nova Scotia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 15th February, 1896, and received by the Secretary of State for Canada on 8th June, 1896, intituled:—

"An Act to amend Chapter 104, Revised Statutes, entitled 'The Judicature Act, 1894.'"

Section 2 of the Act is as follows:—

"Subsection 2 of Section 2 of Chapter 104, Revised Statutes, 5th Series, is hereby amended by inserting the words 'before the Court *in banco* at Halifax' next after the words 'as such' in the fourth line; also by inserting the word 'next' between the words 'years' and 'before' in the fourth line, and by inserting the words 'as Attorney General or' next after the word 'office' in the last line."

Subsection 2 of Section 2 of Chapter 104; Revised Statutes, Nova Scotia, 5th Series, as it stood previously to this amendment, is as follows:—

"No person shall be appointed a Judge of the Supreme Court unless he shall have been a resident barrister of the Province for 10 years, and shall have been practising as such for five years before such appointment, or shall have held office as a County Judge in the Province."

The effect of the amendment, therefore, is, so far as it is within Provincial competency, to further limit the class from which judges of the Supreme Court may be selected to those barristers of the Province who have been resident barristers in the Province for 10 years, and who have been practising as such before the Court *in banco* at Halifax for five years next before appointment, or have held office as Attorney General or County Court Judge in the Province.

The undersigned observes that at the time of Confederation there was a Statute in operation in the Province of Nova Scotia by which it was provided that no person should be appointed a Judge of the Supreme Court unless he had been a barrister of the Province for 10 years, and had been practising as such for five years next before such appointment. (R. S. of N. S., 3rd Series, Chapter 37, Section 1.)

By Sections 96, 97 and 98 of "The British North America Act" it is enacted that the Governor General shall appoint the Judges of the Superior, District and County Courts in each Province, except those of Probate in Nova Scotia and New Brunswick. That until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the Courts of those Provinces is made uniform, the Judges of the Courts of those Provinces,

appointed by the Governor General, shall be selected from the respective bars of those Provinces, and that the Judges of the Courts of Quebec shall be selected from the bar of that Province.

It may perhaps be open to question whether Your Excellency in the appointment of the Judges pursuant to these provisions would be limited by Provincial legislation not inconsistent therewith existing at the union and subsequently continued prescribing the qualifications of Judges. It is clear to the undersigned, however, that, except as to pre-union legislation, the effect of which the undersigned has not now to consider, the scope of selection cannot be limited by Provincial enactment.

This view has been heretofore expressed by several of the predecessors of the undersigned in their reports upon the legislation of the various Provinces.

The Right Honourable Sir John A. Macdonald, commenting upon a Statute of the Province of Manitoba, 35 Vic., Chap. 3, intituled "An Act to amend an Act to establish a Supreme Court in the Province of Manitoba," referred to the 5th section which provided in effect that no Chief Justice or Puisne Judge of the Supreme Court of that Province should be appointed unless able to speak both the English and French languages, and he stated his opinion as follows:—

"This provision in the opinion of the undersigned, is *ultra vires*, as by reference to 'The British North America Act, 1867,' Clause 97, it will be found that the only limit upon the discretion of the Governor General, in selecting such Judges for the several Provinces, is, that they shall be from the bars of the Provinces respectively. It would appear, therefore, that this provision is ineffectual, as being beyond the jurisdiction of the Legislature of Manitoba." He did not, however, recommend the disallowance of the Act, but that the attention of the Government of Manitoba should be called to it with a view to amendment, and he added: "The Government of Manitoba should also, in the opinion of the undersigned, be given to understand that His Excellency the Governor General does not consent to the limitation of his power of selection of Judges contained in the Act (Chapter 3), and will not feel bound by it in any appointments to the bench." (Approved Report of the Minister of Justice of 16th April, 1873. Volume of Reports upon Provincial Legislation, 1867-1895, p. 774.)

Subsection 2, above quoted, was enacted by Chapter 25, Section 3, subsection 2 of the Statutes of Nova Scotia (1884), and in commenting upon it Sir Alexander Campbell made the following observations:—

"At the same time he desires to observe that some of the provisions of Section 3, relating to the qualification of the Judges, the offices they may hold, and their precedence and the oaths to be taken by them are, in his opinion, not within the authority of the Legislature, and very considerable doubt exists with respect to others. The same powers, however, have been exercised by other Legislatures, and as the provisions in regard to them form part only of an Act to improve the administration of Justice of general importance, the disallowance of which would probably give rise to much inconvenience, he recommends that the Act be left to its operation." (Approved report of the Minister of Justice of 4th April, 1895. Volume of Reports upon Provincial Legislation, 1867-1895, p. 523.)

The Right Honourable Sir John Thompson, with reference to a Statute of the Province of Ontario, being Chapter 8 of the Statutes of 1887, intituled "An Act to give early effect to certain amendments of the law recommended by the Statute Commissioners," states as follows:—

"The undersigned desires to call attention to the provisions of this Chapter, so far as it amends Section 33 of Chapter 90, of the Revised Statutes of Ontario (1st series) Chapter 91, Section 52 (present series).

"This legislation assumes that, although the appointment of Superior, District and County Court Judges in each Province, is, by 'The British North America Act,' vested in the Governor General, and that the only limitation imposed by the Act in the choice of Your Excellency is, that Judges of Provincial Courts in the original Provinces of Canada must be selected from their respective bars, a Provincial Legislature has power to limit the choice of Your Excellency by such provisions and qualifications as to it may seem proper."

"The undersigned is of opinion that a Provincial Legislature has no such authority, and that the power of appointment to the bench is absolute in Your Excellency, subject only to the limitations prescribed by 'The British North America Act.'"

"The undersigned, however, does not deem this objection to Chapter 8 to be a sufficient reason for advising Your Excellency to exercise your power of disallowance." (Approved Report of the Minister of Justice of 7th June, 1888. Volume of Reports upon Provincial Legislature, 1867-1895, p. 204.)

The undersigned concurs in the opinion of his predecessors hereinbefore set forth, and is of opinion that the enactment now in question is *ultra vires*, and it appears to him that if its provisions were allowed to govern they might unduly limit the range of selection for appointments to the bench, while, if on the other hand, the provisions being regarded as ineffectual are not to be observed, questions might arise as to the jurisdiction of Judges who might be appointed not possessing the qualification required by the Statute under consideration.

It appears to the undersigned, therefore, that in the public interest this Statute should be disallowed, its only provision in addition to that set forth being a clause authorizing the Supreme Court to make rules for providing juries.

Before recommending the exercise of the authority vested in Your Excellency, however, the undersigned recommends that a copy of this Report, if approved, be transmitted to the Lieutenant Governor of the Province with a view to ascertaining whether Section 2 of the Statute in question will be repealed within the time limited for disallowance.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 13th November 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit a report upon certain Statutes of the Province of Nova Scotia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on 15th February last, and received by the Secretary of State for Canada on 8th June last.

Chapter 1. An Act respecting the Executive Administration of the Laws of this Province.

This Statute is in terms the same as Sections 1, 2 and 3 of 51 Vic., Chap. 5 (Ontario). The latter Statute formed a subject of correspondence between the then Minister of Justice of the Dominion and the Attorney General of Ontario, a copy of which correspondence is printed on pages 206 to 213 of the volume of correspondence and reports upon Provincial legislation, 1867 to 1895, and contains a statement of the objections which were then urged to the legislation from the Dominion standpoint as well as the reasons which were stated in support on behalf of the Province of Ontario.

The Statute was in the result left to its operation, and the question as to its validity was referred to the High Court of Justice for determination under the provisions of the Revised Statutes of Ontario, 1887, Chap. 44, Section 52. The reports of the arguments and decisions in that case in the several courts will be found in 20 Ontario Reports, 232; 19 Ontario Appeal Reports, 31, and 23 Supreme Court of Canada Reports, 258.

The legislation was upheld in the Provincial Courts, both below and upon appeal, and it was also held by a majority of the Judges of the Supreme Court of Canada, although for reasons differing somewhat from those upon which the previous decisions had been based that the enactment was not *ultra vires* of the Legislature. No application was made for leave to appeal to the Judicial Committee of the Privy Council, although it was open to the Dominion Government to make such application.

In view of the decisions of the Courts referred to upholding the Ontario Statute and the acquiescence of the Dominion Government therein, the undersigned considers that the present Act should be left to its operation.

Chapter 44. An Act to provide for supplying the Town of North Sydney with water.

Section 2 authorizes the town council, among other things, to enter upon the bed of any river, lake or stream, whatsoever in the County of Cape Breton and to build dams, reservoirs or other works, and to cause the water of such river, lake or stream to overflow, and to take from such river, lake or stream such quantity or quantities of water as may be required.

Chapter 97. An Act to incorporate the Oxford Water and Power Supply Company, Limited.

Section 9 authorizes the Company to build such dams and reservoirs as may be necessary to obtain and preserve a sufficient supply of water for the purposes of the Company, and to take water from any river, brook, stream or lake within certain limits.

Chapter 101. An Act to incorporate the Young Brothers Company, Limited.

Section 20 authorizes the Company to build dams and sluices on certain rivers therein mentioned and their tributaries, and to improve such rivers and make them navigable for logs, timber and lumber.

Similar enactments have been heretofore objected to in so far as they might affect rivers which under "The British North America Act," it is contended became the property of Canada. The undersigned would refer to the approved report of the Right Honourable Sir John Thompson, of 8th January, 1894, at page 1147 of the volume above mentioned, and to other reports appearing in the same volume in which the objections are stated as to similar legislation of several of the respective provinces.

The questions of right involved in these objections, among others relating to waters and fisheries is now before the courts for adjudication, and pending final judgment, the undersigned does not consider it necessary to say more than that Your Excellency's Government does not admit the authority of a Legislature to enact these provisions as to rivers which are subject to the authority of Parliament under "The British North America Act."

For the reasons above mentioned the undersigned recommends that the Statutes mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 27 November, 1896.)

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of Nova Scotia, in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on 8th June, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 1, 17, 44, 93, 97 and 101, which are the subjects of separate reports.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 22 December, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 18th November, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon Chapter 93, intituled "An Act to incorporate the Home Fire and Marine Insurance Company, Limited," of the Province of Nova Scotia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on 15th February last, and received by the Secretary of State for Canada on 8th June last.

This Statute incorporates a Fire and Marine Insurance Company.

Section 11 provides that the principal office of the Company shall be in the City of Halifax, and that the Company may establish agencies or branch offices, as the Directors may deem advisable.

Section 15, defining the power of the Company, is as follows:—

"The Company may make and effect contracts of insurance with any person or persons, body politic or corporate, against loss or damage by fire or lightning, on any house, store or other building whatsoever, and in like manner on any tenants' risk, rents, goods, chattels or personal estate whatsoever, for such time or times, and for such premiums or considerations, and under such modifications and restrictions, and upon such conditions as may be bargained and agreed upon and set forth by and between the Company and the person or persons agreeing with them for such insurance; and the Company may in like manner make and effect contracts of insurance with any person or persons, body politic or corporate, against loss or damage by fire, storm or tempest or other peril of navigation or carriage, or any other cause whatsoever, of or to the hull, rigging, machinery, furniture and apparel of ships, boats, vessels or other craft navigating the oceans, lakes, rivers or high seas or other navigable waters whatsoever, from any port or ports in Canada to any other ports or port in any part of the world, or from any port or ports, place or places in the world for any period of time; and against any loss or damage of or to the cargoes, including live stock, or property conveyed in or upon such ships, vessels, boats or other craft or conveyance, and the freight due, or to become due, in respect thereof, or of or to timber or other property of any description conveyed in any manner upon any of the oceans, seas, lakes, rivers or navigable waters of the world, or on any railway, or conveyed partly by land and partly by water, between any points by any mode of transport, or stored in any warehouse or railway station—and generally may do all matters and things relating to or connected with fire and marine insurance as aforesaid—the whole, for such

premiums or considerations, and with such modifications, restrictions and conditions as may be bargained or agreed upon or set forth, and may grant all policies therein and thereupon—and may cause themselves to be insured against any loss or risk they may have incurred in the course of their business—and generally may do and perform all other necessary matters and things connected with and proper to promote such objects and all policies or contracts of insurance issued or entered into by the Company shall, under the corporate seal, be signed by the President or Vice-President and countersigned by the managing Director or Secretary, or otherwise as may be directed by the by-laws, rules and regulations of the Company; and being so signed and countersigned shall be deemed valid and binding upon the Company according to the tenor and meaning thereof.”

The powers, which in regard to the business of fire and marine insurance, this Act purports to confer upon this Company are practically unlimited; and with regard to marine insurance the Company is expressly empowered to insure property in any part of the world. The jurisdiction of a Provincial Legislature to incorporate Companies is in the British North America Act expressed to be to incorporate “Companies” with Provincial objects, and this has been construed to mean objects located within the Province and to be locally carried on by such companies within the Province. In this connection the undersigned begs leave to refer to the remarks of the Honourable Edward Blake upon certain Statutes of the Province of Nova Scotia, 38 Victoria, Chapter 76, 77, 78 and 79, and upon a Statute of the Province of Quebec, intituled: “An Act to incorporate the Atlantic Insurance Company of Montreal,” 38 Victoria, Chapter 61; also to the observations of the Right Honourable Sir John Thompson upon a Statute of the Province of Nova Scotia, intituled: “An Act to incorporate the Fisherman’s Insurance Company of Lunenburg, Limited,” 56 Victoria, Chapter 167 (approved reports of the Ministers of Justice of 25th October, 1875, 19th September, 1876, and 27th January, 1894. Volume of Reports upon Provincial Legislation, 1867-1895, at pages 263, 264, 265, 491 and 635).

A Statute of Nova Scotia incorporating a Company for the purpose of running steamers on the coast of the Province and elsewhere was disallowed upon the recommendation of the late Mr. Justice Fournier, when Minister of Justice, because there was no limit to the operations of the Company within the Province, and because of the word “elsewhere.” (See his approved report 31st March, 1875, on page 488 of the Volume of Dominion and Provincial Legislation.)

The question, however, not being free from doubt, the undersigned is not prepared to recommend the disallowance of the Act now under consideration, but recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60th VICTORIA, 1897

3RD SESSION—31ST GENERAL ASSEMBLY

(Approved 20 September, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 18th August, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Acts passed by the Legislature of the Province of Nova Scotia in the sixtieth year of Her Majesty’s reign (1897), and which were received by the Secretary of State for Canada on the second

day of July, 1897, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 2, 3, 27, 52, 63, 81, 82, 83, 95, 97, 98, 100, 102, 103, 104, 105, 106, 107, 109, 111, 112, 113, 157, upon which he will make a separate report.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

Messrs. Harrington, Chisholm, Fullerton, to the Honourable the Minister of Justice.
187 HOLLIS STREET, HALIFAX, N.S., 19th March, 1897.

The Honourable Sir Oliver Mowat, Minister of Justice, Ottawa:

SIR,—We beg to transmit herewith a Memorial on behalf of the Dominion Cotton Mills Company, Limited, and Miss Piers, praying for the disallowance of an Act of the Legislature, entitled, "An Act to expropriate lands for an annual Provincial Exhibition;" also copy of the *Royal Gazette*, containing, on page 108, a copy of the Act and the Proclamation thereof; also copies of the several judgments or opinions of Weatherbe and Ritchie, J.J., bearing on the proceedings which that Act purports to validate. It will be necessary to refer to Statutes of this Province, namely, Statutes of 1896, Chapter 3, and those of 1891, Chapter 58. If necessary, we shall forward copies. We respectfully request that the matter shall receive due attention.

We remain, your obedient servants,

HARRINGTON, CHISHOLM & FULLERTON,
Attorneys of Memorialists.

Memorial of the Dominion Cotton Mills Company, Limited, and Mary Piers, for disallowance of Chapter 3

In the matter of an Act intituled, "An Act to expropriate lands for an Annual Provincial Exhibition," passed by the Legislature of the Province of Nova Scotia, and assented to by the Lieutenant Governor on the first day of March, 1897, and coming into force by Proclamation on the 10th day of March, 1897.

The Honourable Sir Oliver Mowat, Minister of Justice, Ottawa:

The Memorial of the Dominion Cotton Mills Company, Limited, and Mary Piers, for the disallowance of said Statute,

RESPECTFULLY REPRESENTS:

The Provincial Exhibition Commission was incorporated by Chapter 3 of the Acts of the Legislature of Nova Scotia, passed in the year 1896.

By the eighth section of the Act the Commission is required to hold an Annual Exhibition in the City of Halifax.

Section 21 of the Act enables the Commission to acquire lands necessary for the object of the Act and certain sections of Chapter 58 of the Acts of 1891 are incorporated, with necessary modifications, to empower the Commission to expropriate lands should they be unable to acquire the same by private contract.

The Commission took certain steps and proceedings in the summer of 1896, with the view of expropriating the lands described in the Act of Parliament of 1st March, 1897, under the procedure provided by the sections of Chapter 58 of the Acts of 1891. These proceedings were resisted by the Dominion Cotton Mills Company, Limited, by Mary Piers, and others, whose lands were sought, and on the 23rd day of October, 1896, an Order in Council was passed by the Governor in Council of the Province of Nova Scotia, granting leave for the expropriation of the

lands described in the Act of 1st March, 1897. This Order in Council is referred to, and the essential parts of it are set out in the opinion of Honourable Mr. Justice Ritchie, Judge of the Supreme Court of this Province, a copy of which will accompany this communication.

On the 20th day of November, 1896, the Dominion Cotton Mills Company, Limited, commenced an action in the Supreme Court of Nova Scotia against the Commission, by which it was claimed amongst other things, that the Commission had unlawfully expropriated the plaintiff's lands. The Dominion Cotton Mills Company, Limited, in said action asked for an Injunction or Restraining Order, restraining the Commission from expropriating the plaintiff's lands. The Commission appeared to the writ of summons in said action, and afterwards a statement of claim was delivered on behalf of the plaintiffs, to which the Commission pleaded a defence. On the 5th and 6th days of March, 1897, an application for an interim injunction was heard before said Mr. Justice Ritchie, which was opposed on behalf of the Commission. On the 10th day of March, 1897, said Mr. Justice Ritchie filed his opinion above mentioned. On the 10th day of March, an Interim Restraining Order was granted in pursuance of said opinion or judgment of the learned judge.

On the 10th day of March, 1897, the Act passed on the 1st day of said month was brought into force by proclamation of the Lieutenant Governor, published in the *Royal Gazette*, a copy of which, and the Act itself, is transmitted herewith.

The action brought by the Dominion Cotton Mills Company, Limited, has not yet been brought on for trial.

Mary Piers, who resides on the lands in question, has also brought an action against the Commission, seeking similar relief, which has not yet reached the stage of a trial.

Memorialists respectfully represent that the said Statute, passed on the 1st of March, 1897, and brought into force on the 10th day of said month, should be disallowed as an arbitrary and unjustifiable exercise of power, for the reasons following:—

1. The Legislature of Nova Scotia can only appropriate private property for the public good or for public uses. It takes the properties of citizens and gives it to a corporation for purposes other than the public good or public necessity. Assuming that an exhibition, as such, is a matter of public concern, then the Exhibition Commission have ample powers as large as the Sovereign power itself by the operation of their own Act, Chapter 3, Acts of 1896, combined with Chapter 58 of the Acts of 1891, to expropriate all lands "necessary" for that purpose. But, because it was proved to the satisfaction of two Judges of the Supreme Court of Nova Scotia, that the lands were being taken for purposes other than exhibition purposes, this Vesting Act has been passed so that the lands may be used for any purpose. Memorialists are prepared to show that they are to be used for a race track, for circus tents, and gambling purposes. A vital objection to the expropriation proceedings which culminated in the Order in Council referred to in the Vesting Act is the absence of evidence or proof that the lands, or all of them, are necessary. See the opinion of Honourable Mr. Justice Ritchie, delivered in *Dominion Cotton Mills, Ltd. vs. The Provincial Exhibition Commission*. Had the Commission produced the statutory proof before the Governor in Council that all the lands vested were necessary for exhibition purposes, in that case the Order in Council would not require ratification, and no Vesting Act would be necessary. As the facts appear, it is clear that by force of this extreme exercise of the legislative power (Statute, 1st March, 1897), lands are given to the Commission which they could not acquire under their Act of Incorporation, and for purposes other than those connected with any matter of public utility. The Commission evaded giving any proof of necessity for the obvious reasons pointed out in Mr. Justice Ritchie's opinion, and to repair defective proceedings they invoke an Act of Parliament to arbitrarily deprive citizens and corporations of ownership of property.

The Act of 1st March, 1897, does not pretend to assert that the lands are necessary for exhibition purposes; it recites that there are doubts existing as to the regularity and validity of the Order in Council. If such doubts (*i.e.*, as to regularity of proceedings) existed, they might well have been set at rest by an amending Act. But the Act in question makes the Legislature take sides in a dispute going forward in the courts as to the public need for the lands in question, and by purporting to vest them in the Commission irrevocably binds the Commission to take them, whether needed or not, and whether or not much more suitable grounds were available for the purpose in view. Further, it purports to give power to take these lands without a moment's notice to the owners, to enter and demolish buildings, &c., so that Miss Piers may find her homestead pulled down from over her head, without an opportunity of providing another, and the Cotton Company, a large industry, find itself deprived of lands necessary for its work. These unprecedented powers are granted, as will be shown, without adequate provision for compensation; all of which is contrary to natural justice, and to the first principles upon which legislation should proceed.

2. It will appear from the opinion of Mr. Justice Ritchie, which was delivered subsequently to 1st March, 1897, another learned Judge of the Supreme Court of Nova Scotia, having previously expressed an opinion with regard to the Order in Council (copy of which is submitted herewith) that the defects in the procedure prior to the date of the Order in Council go to the very root of the matter and that instead of there being doubts as to the validity of the Order the fact is the order is wholly null and unsustainable. If it were a question before the Legislature of confirming and ratifying the Order in Council (without more), and the Legislature actually by its solemn Act of Parliament interposed and ratified the order, notwithstanding its nullity, would not that be a sufficiently strong case for applying the vetoing power? How much stronger is the case made when the ratifying Act proceeds further and takes the form (by way of comparison) of a deed confirming a previous deed which was not executed in accordance with the provisions of the Statutes relating to conveyances, and therefore ineffective and null. The Act of 1st March, 1897, in one of its recitals says: "And whereas, by a judgment of the Supreme Court, some doubt has been thrown as to the regularity and validity of said Order in Council." On this very recital, suggesting as it does, not the irregularity alone, but the invalidity of the Order in Council as well, the want of competency on the part of the Legislature to pass the enactment of 1st March, 1897, is self-manifest. It is an elementary proposition that a Legislature cannot retrospectively cure by a healing Statute any defects in legal proceedings which, under a prior Statute of the same Legislature, rendered such proceedings void. Cooley, at page 458, states the rule thus:—"If the thing wanting or which failed to be done and which constitutes the defects in the proceedings is something the necessity for which the Legislature might have dispensed with by prior Statute, then it is not beyond the power of the Legislature to dispense with it by subsequent Statute." The position here is that the Commission failed, under their Act of Incorporation and the sections of Chapter 58 of the Statutes of 1891 (sections 432 to 437) to acquire the lands in question not by reason of irregularities or informalities in the proceedings, but of a total failure to comply with the requirements of these Statutes in essential particulars (as found by Mr. Justice Ritchie), and that the Order in Council was, in fact, granted without jurisdiction; it is obvious, therefore, that if the Order in Council is invalid from want of jurisdiction, or under the construction of the expropriation clauses contained in the Statutes of 1891, the healing Act cannot either confer jurisdiction or legalize the order.

3. The Commission have power to acquire lands for exhibition purposes (see Chapter 3, Acts 1896, Sections 6 and 21). The Act of 1st March, 1897, has a clause as follows, namely, clause 5:—

"The track or course to be constructed on the land hereby vested in the said Commission shall be used solely for the purpose of a County, Provincial or Dominion Exhibition, including the exhibition of horses, cattle and other animals, and shall not

be used or let for any other purpose, and the same shall not be used or let for use except at a time when an exhibition is being held."

It is strenuously contended on behalf of the memorialists that a track or course and circus tents which the official programme of the exhibition announces are to be erected are not required, at all events not necessary for exhibition purposes, are not matters of public moment, and are not such objects as to justify the exercise of the right of eminent domain, especially in the harsh and unjust manner sought to be adopted by the Act in question. For the construction of a track it is self-evident that a considerable tract of land must be had. The maintenance of a track or course was not contemplated by the original Act of Incorporation. Hence, it could not be shown before the Governor in Council by affidavit or otherwise that all the lands embraced in the Order in Council were necessary for public purposes, simply because a lesser acreage would suffice for that purpose. The validity of the Order in Council is attacked by reason of the lack of such evidence. The Order, if not in fact, is prospectively, at least, invalidated by judicial decision. Should the Commission be permitted by the expedient of an Act of Parliament, passed *ex post facto*, not only to defeat the rights of litigants, but at the same time, add to their corporate powers, by being enabled to acquire lands for a track or course, while there is no pretence of amending the original Statute with a view of extending such powers.

4. Certain moneys were paid into Court by the Commission to respond the awards that may be made for compensation to the proprietors whose lands have been taken. (See section 4 of the Act, 1897). The compensation, as a general rule, should precede the divesting of the title out of the owner, but by this Statute of 1897 the title is divested the moment it becomes law—while the initiatory steps towards compensation are left wholly to the Commission. It will be seen by reference to the 9th and 10th sections of Chapter 3, Acts of 1896, that the resources of the Commission are \$60,000 altogether; one-half of this sum is to be provided for by the City of Halifax, the other half by the Government of the Province of Nova Scotia. As to the amount to be contributed by the City of Halifax, it does not appear that the same has been received by the Commission, or in any wise secured to them. *Noni constat* that the Corporation of the City of Halifax may refuse to provide for the assessment thereof. True, they have authority from the Legislature to do so, but it still remains discretionary with that body to levy that sum. As a matter of fact, the amount paid into court as representing the value of the property of the Dominion Cotton Mills Company, Limited, is the sum of \$11,250, while that Company claims that the lands of which it is divested are of the value of at least \$25,000, and Miss Piers holds that her lands, in respect of which the Commission paid into court the sum of \$3,000, are of much greater value. Assuming, as will undoubtedly be the case, that the sums are deficient as compensation, being the mere offers of the Commission, and even that the insufficiency be not very marked, what security have the parties divested absolutely of their titles for the payment of the residue of the compensation? The whole of the Commission's funds may be expended before the arbitration is held and the value determined. There is no provision in the Act for this exigency, and the parties divested of their lands will have no remedy. "The exercise of the power to take private property," says an eminent Judge, Chancellor Waldworth, 18 Wend, at page 16, "even for uses which are confessedly public, should not be resorted to in any case unless the benefit which is to result to the public is of paramount importance in comparison with the individual loss or inconvenience, and an *ample* and *certain* provision should always be made for a full and adequate compensation to the individual whose property is thus taken"; and at page 19, "there must be a certain and adequate remedy," and owner is not to be compelled to trust to the "solvency of an incorporated company."

And your Memorialists pray that such Act may be disallowed or suspended, because (regard being had to the powers of expropriation already existing) it is an unnecessary exercise of the power of eminent domain; because it takes the land of citizens for no purpose of public utility; because it prevents lands better suited

for the purpose in view from being taken, by irrevocably binding the Commission to take those mentioned; because it interferes with and destroys the right of suitors before the courts of the Province; because of its harsh and unjustifiable method of giving possession without notice; and, finally, because no adequate compensation is provided for, but the owners are first to be turned out of their homes, and afterwards to depend on the will of the Commission to proceed with the arbitration, and on their ability to pay such sum as may be awarded.

THE DOMINION COTTON MILLS CO.,
(LIMITED),

and

MARY PIERS,

By their Attorneys:

HARRINGTON, CHISHOLM & FULLERTON.

Dated at Halifax, 19th March, A.D., 1897.

Judgment of Mr. Justice Ritchie

THE DOMINION COTTON MILLS COMPANY, LIMITED, vs. THE PROVINCIAL EXHIBITION COMMISSION

This action is brought to set aside certain proceedings commenced by defendants to expropriate lands of the plaintiffs and for an injunction to restrain defendants from entering into said lands and taking possession thereof, and from proceeding further in said expropriation proceedings.

The application now before me is for an interim injunction to the same effect, until the trial.

The defendants' rights depend entirely upon the construction and effect of Chapter 3 of the Local Acts of 1896, and the sections of the charter of the City of Halifax which are made applicable to expropriation proceedings by defendants. This Act recites that it is expedient to provide for an annual Agricultural and Industrial Exhibition for the Province, to be held in the City of Halifax. It then incorporates and gives certain powers to the defendants, and in the 21st section it provides that "for the purpose of obtaining lands necessary for carrying out the purposes of this Act the Provincial Exhibition Commission shall have the same power and authority as affects the expropriation of lands as is now possessed by the City Council of Halifax under the provisions of Chapter 58 of the Acts of 1891 (City Charter), and the provisions of section 432 to 437, both inclusive, of said chapter shall apply to such expropriation, &c., &c. Section 432 just referred to, authorizes defendants to contract and agree with the owners in respect of any lands they *may require*, and makes such agreements valid. Section 433 goes on to provide for the expropriation of the lands, &c., in case no agreement can be made, &c., and the three following sections provide for the payment of the value thereof after it has been ascertained by arbitration. Then follows Section 437, which, after making the changes in it required by Section 21 of Chapter 3 of the Acts of 1896, will read as follows:—

"No property of any kind shall be taken or expropriated under the provisions of this Act unless or until the Provincial Exhibition Commission shall have submitted to the Governor in Council a duplicate plan of said lands proposed to be so taken, together with an application on behalf of said Provincial Exhibition Commission, supported by affidavit of the President of the Commission, or any Engineer or Land Surveyor authorized to act for the Commission, referring to such plan, and stating that the land or property thereon is necessary for the purposes of providing for an annual Agricultural and Provincial Exhibition Commission for the Province, to be held in the City

of Halifax, or some or one of such purposes, and that the Provincial Exhibition Commission and the owners of the same are unable to agree on the price thereof, and requesting the Governor in Council to authorize the taking thereof for said purposes, and like notice as in Sections 433 and 434, provided, if such application be given by the Provincial Exhibition Commission to the owner or possessor of such property, and the giving of such notice shall be certified by the President or Secretary of the Provincial Exhibition Commission. The Governor in Council shall inquire into the correctness of the plan and the truth of the allegations of such application and, if satisfied thereof, shall, by Order in Council, approve of the taking of such property, or any part thereof, and upon such approval the Provincial Exhibition Commission may proceed in the manner stated in the preceding sections."

The principles applicable to the construction of Acts of this description were settled by Lord Eldon in *Blakemore vs. Glamorgan Canal* (1 My. & K. 154) and *Jervis, C. J.*, in giving judgment in the Exchequer Chamber in *York and U. Midland Railway Company vs. The Queen* (1 E. & B. 856) said: "We agree with my brother Alderson, who, in *Lee vs. Milner* (2 Y. & Col. Ex., Eq., 611) said these Acts of Parliament have been called Parliamentary bargains made with each of the land-owners. Perhaps more correctly they ought to be treated as conditional powers given by Parliament to take the lands of the different proprietors through whose estate the works are to proceed. Each land-owner, therefore, has a right to have the powers strictly and literally carried into effect as regards his own land, and has the right, also, to require that no variation shall be made as to his prejudice, in carrying into effect the bargain between the undertakers and any one else. This, he adds, I conceive to be the real view of the law taken by Lord Eldon in *Blackmore vs. Glamorganshire Canal Co.* See also *Plymouth vs. Davenport* (52 L. T. 162), *Bostock vs. North Staffordshire Railway Company* (2 Jurist N. S. 248), and *Webb vs. Manchester Railway Company* (4 My. & Cr. 120), where Lord Chancellor Cottenham, referring to similar powers of taking land, said: "The powers are so large—it may be necessary for the benefit of the public—but they are so large and so injurious to the interest of individuals that I think it is the duty of every court to keep them most strictly within those powers, and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers, but they will get none from me by way of construction of their Act of Parliament." This judgment is also approved by Lord Chancellor Westbury, in *Simpson vs. Staffordshire Water Co.* (4 De G. J. & S. 685).

I think it is clear that a compliance with Section 437, above mentioned, is a condition precedent to the taking or expropriation of any land—except under an agreement, and the only steps defendants can take before applying to the Governor in Council is to attempt to make an agreement with the owners and, perhaps, enter the land to survey it, although this latter step is somewhat doubtful.

The application must be made (in writing, I think, because the truth of the allegations in it are required to be verified) to the Governor in Council, accompanied by a plan and supported by an affidavit referring to the plan and stating that the land or property therein (in the plan) is necessary for carrying out the object of Chapter 3 of the Acts of 1896, that is, to provide for an Annual Agricultural and Industrial Exhibition for the Province, to be held in the City of Halifax, and for the establishment and maintenance thereof on the joint account of the Provincial Government and the corporation of the City of Halifax, in equal parts. On such application, and after notice to the owners of the property, the Governor in Council shall inquire into the correctness of the plan and the truth of the allegations of the application, and if satisfied shall approve the taking, &c. It is, I think, necessary in order to give the Governor in Council the jurisdiction to inquire into the matter that the application should be made as directed and the necessity of taking the land for the purposes

mentioned sworn to, either by the President of the Commission or an Engineer or Surveyor authorized to act for the Commission.

The granting or refusal of an injunction in case like this is based upon different grounds from those which govern ordinary cases, they will be found fully set out in Kerr on Injunctions, at pages 118 and 119, and in the cases there recited, and in my opinion this case is within the principles there enunciated.

The Order or Minute of the Governor in Council, under which defendant's claim is in this form:—

"The Council have had under consideration the application of the Provincial Exhibition Commission, dated the 6th day of August, 1896, for power to take and expropriate under the provisions of Section 21 of Chapter 3 of the Acts of 1896, the following lands (here follows the descriptions of several lots of land, numbered on a plan of proposed exhibition grounds filed in the city engineer's office in Halifax). The Council being satisfied of the correctness of the plan and the truth of the allegations of such application, respectfully recommend that the taking of the four following lots by the Provincial Exhibition Commission be approved under the provisions of Section 21 of Chapter 3 of the Acts of 1896 (then follow the descriptions of a portion of the lots before described).

It will be observed that the allegations in the application, with the truth of which the Council are satisfied, are not disclosed, nor is it anywhere stated that the lots, the taking of which are approved, are necessary for the purposes of the exhibition. There is no reference made to the production of any plan before the Council nor is it stated that the application was supported by affidavit, as required by Section 437.

The document submitted to me which is alleged to be a copy of the application to the Governor in Council, is a resolution authorizing F. W. W. Doane, Engineer for the Commission, to make certain offers for the purchase of certain properties for the purpose of providing a site for a Provincial Exhibition, and that the Engineer reported that he had made the offers, none of which were accepted, concludes as follows:—"Therefore, resolved that this Commission request and hereby requests the Governor in Council to authorize this Commission to expropriate all the estate, right, title, interest and possession of the owners or occupants thereof, in and to the several lots of land hereinafter described (then follows the descriptions of the lots).

An affidavit was read before the Council, made by Mr. Doane, an Engineer employed to act for the Commission, in which he swears: "that certain lots of land (describing them, and including the plaintiffs) *are required by the said Commission for the purposes mentioned in said Chapter 3 of the Acts of 1896 of the Legislature of Nova Scotia,*" according to the provisions of Section 437, the affidavit in support of the petition must state that the land or property *is necessary for the purposes, &c.,* and this, which is the basis of the application, must, in my opinion, be strictly complied with.

In my mind there is a good deal of difference between the two expressions. A conscientious person with the resolution of the Commission before him might, without hesitation make affidavit that the Commission required (that is, demanded or requested or insisted upon having, or needed) the property, but might decline to swear that the same property *was necessary* (that is, indispensable, or essential, or requisite). Besides this, in the affidavit the deponent swears that *he believes the Commission requires* the land, while the Act says he must swear that the land *is necessary*, that is from his personal knowledge a far different thing.

There are other questions, too, with reference to the intended use of the property for purposes outside the Exhibition, and an agreement alleged to have been entered into between the parties before the Council, on which the Order, so far as regards the plaintiffs' property, is based. The affidavits on these points are conflicting, but the questions will have to be settled before the expropriation proceedings are perfected, as the validity of the Order in Council may depend largely upon them.

Taking all things into consideration, and without deciding as to validity of the proceedings before the Council and the Order thereon, I think there is sufficient grounds for granting an interim injunction to prevent defendants from disturbing the plaintiffs in the possession of their lands, and proceeding further with the expropriation proceedings until the trial of this cause.

On principle the injunction should extend to the whole of plaintiff's land but as, in reality, the contention affects only a portion of it, the plaintiffs being willing that the defendants should have the remainder on paying its fair value, the injunction will be restricted to that portion of the lot lying to the eastward of the red line drawn on plan "B," referred to in the affidavit of John Taylor, and shall not prevent the defendants from entering into the possession of sufficient land at the north-east corner to enable a track to be laid from the existing railway siding, so that cars may pass and re-pass into the grounds of the westward of the red line. If the necessary descriptions cannot be agreed upon by the parties, I will settle them on application.

My attention has been called to the fact that an Act has been passed at the last session of the Local Legislature bearing upon the questions in litigation in this suit, but as that Act is not yet in force, and may never be put in operation, it cannot at present affect, in any way, my decision.

Costs of both parties will be costs in the cause.
10th March, 1897.

Judgment of Mr. Justice Weatherbe

Opinion of Mr. Justice Weatherbe on application to him to appoint an arbitrator on behalf of Miss Piers, whose lands were expropriated.

Chapter 3 of the Acts of 1896 styled "An Act to provide for an annual Provincial Exhibition" incorporates twelve persons by the name of "The Provincial Exhibition Commission."

The preamble states that it is expedient to provide for an Agricultural and Industrial Exhibition, to be held in Halifax, and for its maintenance on the joint account of the Provincial Government and the City of Halifax.

Beyond this mere statement in the preamble of the expediency of providing for such an exhibition, and that it is to be held on the joint accounts of the City and the Government there is nothing whatever to define its purpose, character or object.

The corporation is empowered to purchase land and erect buildings, and by Section 21, for the purpose of obtaining lands necessary for carrying out the object of this Act, power of expropriation is conferred, such as that now possessed by the city under Sections 432 to 437, inclusive of Chap. 58 of the Acts of 1891.

These clauses give power where agreement is impossible or the owner is unknown to expropriate lands for water and street purposes.

By attending carefully to these sections (which being far from happily expressed are obscure) in connection with Chapter 3 already mentioned, it becomes obvious that it will at the outset be necessary to inquire what are the objects of the Act, and secondly to find out what lands are necessary for such purpose. Then it will be necessary to ascertain if an agreement can be made with the owner. If not there must be a resolution of the corporation authorizing some one to enter upon and survey lands. Plans must then be made, upon which I suppose the next proceeding will be a petition to the Governor in Council supported by affidavit setting out the necessity for taking the lands and the impossibility of agreement on the price.

The property cannot be taken previous to the inquiry on this petition, which involve, I should think, under the circumstances, a most difficult task. It involves at any rate the question as to what are the objects of the Act and whether the

particular land required is necessary. In the compulsory taking of lands for water supply, or for streets which was the primary object in passing these sections, it is not difficult to find whether the land is necessary. You find the lake and know the depth required to overflow, and the precise locality and areas are matters of certainty, and so of the street. No other place will suit, and the object to be attained is definite. The same may be said in respect of Mines and of a Railway. The object sought is beyond doubt. Only one spot will suit. You are not tied to one site for an exhibition, and every one may have a different view as to the objects of the Act. The matter is left in the greatest uncertainty. It is suggested, for example, that the lands of Miss Piers may be required for a race course within the meaning of this Act. All this at any rate would be involved in the investigation before the Governor in Council. And from time to time hereafter lands under this Act may be demanded by expropriation from any citizen.

The object to be attained by application to and investigation by the Governor in Council is to obtain an order for approval on the part of the corporation to proceed according to Sections 432 to 436, inclusive.

Then must follow resolutions, in the terms of the legislation of the corporation, authorizing some one to take possession, after which I suppose there must be notice. A reasonable sum in payment of the lands required must be paid into the Supreme Court, and notice must follow this before further proceedings are proper.

If after this the original proprietor is not satisfied, the next step I think is for the corporation to appoint one arbitrator. The other party upon this has the right to appoint one if he desires. If he declines to do so application may be made to a Judge.

Down to this point I think the proceedings are not ripe for application here. I have no doubt there must be a refusal, after the selection by the corporation, by the "owner" as a condition precedent to this application.

Moreover, I must point out, and it is hardly necessary to say that no application can be successful to a Judge until the provisions of the Statutes are strictly complied with.

That document produced to me as an Order of the Governor in Council is clearly not in compliance with law. It entirely fails to disclose for example any inquiry whatever into the truth of the allegations of the application to the Governor in Council.

That application the Statute requires should be verified by an affidavit that the required lands were necessary. There is no recital in the Order that even this was done. An affidavit, it is true, was read on the application to me stating that the lands are necessary. I am not now called upon to say whether a Judge of this Court is to determine that question. Counsel for Miss Piers requested that before so determining, Mr. Doane, the Engineer, should be cross-examined on the difficult point of necessity for taking these lands. The proper point in this inquiry is not reached to say how the "necessity" mentioned in the law is to be determined. If it is to be upon an inquiry here a mere statement in an affidavit is wholly insufficient. The necessity must be shown, which involves a disclosure, of the objects of the enactment of 1896.

The application is dismissed with costs.

The Attorney General of Nova Scotia to the Minister of Justice

HALIFAX, N.S., 29th April, 1897.

DEAR SIR,—I have to acknowledge receipt of a communication from the Deputy Minister under date of the 24th March, inclosing a copy of a memorial from the Dominion Cotton Mills Company, Limited, and Mary Piers, for the disallowance

of an Act passed at the last session of the Provincial Legislature, entitled "An Act to Expropriate Lands for an Annual Provincial Exhibition," and asking me to forward such observations as I might see fit to make in respect to the allegations of such memorialists.

I have carefully perused this document and I may state frankly that I do not find in its contents anything which either would justify the disallowance on constitutional grounds or as affecting public policy. It is, I hope, needless for me to point out that the matter of providing for an Annual Provincial Exhibition is one essentially within the competency of the Provincial Legislature, that the power of expropriation of land for public purposes of a Provincial character is vested beyond all doubt or question in the Provincial Legislature as fully indeed, perhaps more so, than that of the Federal Parliament to expropriate lands for federal purposes.

When the Act providing for a Provincial Exhibition was originally passed its framers adopted the proceedings usually available for the expropriation of lands for public purposes by the City of Halifax. It happened, however, that the processes embodied in the clauses of the Halifax Act, which were borrowed for that purpose, gave latitude to litigation, which, if permitted to go on, would have postponed for a year or two the inauguration of this Provincial Exhibition, which is believed to be greatly in the interests of the people of Nova Scotia. It became necessary, therefore, in order to stop litigation, which indeed had no merits whatever, but was introduced and carried on for purely factious purposes, that a special Act be passed distinctly vesting in the Exhibition Commissioners such land as was necessary for the purposes of such exhibition.

So far as any merits are concerned in respect of the Dominion Cotton Mills Company, I may state that prior to expropriation proceedings, that Company through its agent and representative, had agreed to the transfer of all the surplus land which it possessed in that vicinity to the Commission. A stipulation was made that certain lands should be reserved out of it for the purpose of extending their buildings, and if necessary, enlarging their works, and a considerable portion of their lands, more than abundantly ample for such purposes, was accordingly reserved. Hence the action for expropriation proceedings could have been inaugurated, in so far as I am able to form an opinion, solely for the purpose of forcing a settlement upon terms of specially large remuneration, which the Commissioners did not feel disposed to agree to, and which attempt was promptly thwarted by the action of the Legislature.

The case of Mary Piers does not differ in any respect from that of other private persons whose land is expropriated for public purposes. So far as Miss Piers herself is concerned she has no other interest in the business than the sale at fair terms of her land. Her brother has resided on the property for a considerable number of years and professes to have special attachments to the spot. In order to meet in the fullest degree these sentimental considerations, the Commission offered that the present residence and homestead of Mr. Piers should be occupied by him, rent free, to the end of his mortal life, provided that the land attached to it was made available for exhibition purposes. This very reasonable offer was refused, but a counter offer was made by Mr. Piers to the effect that if instead of leaving the matter to arbitration the sum of six or seven thousand dollars was paid for his land and house further proceedings would be withdrawn. This will be a clear indication that the litigation in the case was prompted less by any deep-seated sentimental attachment to the land in question than the desire to extort money from the Commission.

I can scarcely believe that it will be deemed within the range of bona fide constitutional dispute that the Legislature can only expropriate private property for public good or for public uses, and that in fixing the amount of land necessary for the purpose of a Provincial Exhibition the Legislature is not the sole and final judge. Under the expropriation clause of the charter of the City of Halifax it may have been open for the Court to inquire into the question of whether a

certain amount of land was necessary for the purposes of a Provincial Exhibition, but when the Legislature by meets and bounds has by solemn Act declared certain lands within these meets and bounds duly vested in the Commission for the purposes of a Provincial Exhibition, it would indeed be a startling proposition if His Excellency the Governor General should, on the advice of his Ministers, constitute himself a judge of whether the amount was reasonable or not.

If any doubt should possibly arise on this point, let me say that the total amount covered in the Expropriation Act does not exceed thirty acres; that the exhibition grounds in the City of Ottawa cover already a larger space than that, and the demand for more room is so keen that I am advised that the authorities are preparing to extend their borders. In the City of Toronto the land for exhibition purposes already, as I am advised, covers at least 140 acres, and I have been informed that the Board of Control are finding it necessary to acquire a still larger area. The proposition then that the land taken is too much for this purpose is certainly entirely without foundation.

I feel that it would be inconsistent with the recognized prerogatives of the Legislature to discuss the question of whether there should be speeding tracks and other grounds for recreation and amusement connected with and part of the exhibition. I submit that that is a matter entirely within the scope of the legislative control of the Province, and not properly subject to review or inquiry under the spirit of the veto power vested in His Excellency the Governor General. The same observation applies to the resources of the Commission, which are a matter of no concern to the Dominion Cotton Mills Company or to Miss Mary Piers.

The authorities quoted I do not deal with for the reason that they do not seem to me to have the slightest bearing upon the matter now under consideration. They refer to technical points raised in test law cases in the courts. In this case it must be understood that there is another distinction. The Legislature have by stated meets and bounds vested certain lands in the Commission absolutely, unreservedly and without limitation. The amount of land so compassed is not excessive. No pretence for private injustice is established, and, even if it were, it seems to me that it is yet a question which concerns the Legislature of the Province of Nova Scotia solely and entirely.

The statement that no adequate compensation is provided for is entirely at variance with the facts. Provision is made that the value of land is to be determined by arbitrators, one appointed by the Commission, one appointed by the owner, and a third, in case of dispute, by a Judge of the Supreme Court. Surely such a tribunal can be relied upon at all times to give ample value for property taken away from the owner unwillingly and for public necessities. For these reasons I submit that not a pretence of a case for disallowance has been made out, but on the contrary, if the veto power were exercised in this case it would be an unprecedented and flagrant interference with Provincial rights, which has had no precedent since Confederation.

I have the honour to be,

Your obedient servant,

J. W. LONGLEY,

Attorney General.

(Approved 27 August, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 18th August, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the following Statutes of the Province of Nova Scotia, passed in the sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State for Canada on the second day of July, 1897.

Chapter 3. An Act to expropriate lands for the purpose of an Annual Provincial Exhibition.

The undersigned has received a letter from Messrs. Harrington, Chisholm and Fullerton, Solicitors, of Halifax, Nova Scotia, inclosing a memorial from the Dominion Cotton Mills Company, Limited, and Miss Mary Piers, seeking the disallowance of this Statute. These communications together with copies of the opinions of the Honourable Mr. Justice Weatherbe and the Honourable Mr. Justice Ritchie of the Supreme Court of Nova Scotia, which accompanied the same, are submitted herewith. Copies of those papers were by direction of the undersigned referred to the Attorney General of the Province for his observations, and a copy of the Attorney General's letter in reply is also submitted.

It will be observed that the memorialists base their claim for disallowance of the Act upon several grounds. It appears that previous to this enactment proceedings had been taken in the Supreme Court of Nova Scotia at the instance of the memorialists to restrain the Provincial Exhibition Commission from expropriating the lands described in this Statute, the Commission having taken certain steps for such expropriation under Statutes then in force; that upon an interlocutory motion, Mr. Justice Ritchie granted an interim restraining order upon the ground that the Commission had not in its proceedings for expropriation satisfied the requirements of the Statutes under which it professed to act. The same view seems to have been taken by Mr. Justice Weatherbe, who heard an application on behalf of the Commission to appoint one of the arbitrators to settle the compensation for the lands which it was proposed to take. While these proceedings in the Court were pending, the Statute complained of was enacted, and shortly afterwards brought into force by Proclamation, the effect of which is to vest the lands absolutely in the Commission irrespective of the questions at issue in the pending litigation, and to render hopeless the further prosecution of those proceedings, so far as concerns the main object to be attained by them.

The objections now urged by the memorialists in effect are: That the lands expropriated are required for other than exhibition purposes, and are not necessary for purposes of the exhibition; that the Act contains no provision for reasonable notice to the proprietors before possession taken by the Commission; that the Statute is *ultra vires* of the Legislature, because it professes to retrospectively cure defects in the previous expropriation proceedings; that the Statute unjustifiably interferes with pending litigation between the memorialists and the Commission, and that there is no adequate provision for payment of compensation to the proprietors for the lands taken.

The undersigned considers that the question as to the public utility or convenience of vesting these lands in the Exhibition Commission is one entirely for the consideration of the Provincial Legislature, and that it is not his province to review the reasons which have led the Legislature to make the expropriation. There can be no doubt as to the constitutional authority of the Legislature to enact this Statute. The authorities mentioned in the memorial are from the United States Courts and depend upon reasons which have no application to the Legislatures constituted by the British North America Act.

As to the compensation for the lands taken, it appears that the Commission had paid into Court a sum of money representing, according to their view, the fair value of the lands taken. Section 4 provides that the proprietors are entitled to be paid out of this money, and, if the amount awarded by the arbitrators is greater than the sum paid into Court, that the Commission shall forthwith pay such additional amount to the proprietors. This, to the undersigned, seems to be a fair and ordinary mode of providing and securing compensation.

The undersigned does not apprehend, upon a perusal of all the papers, and having regard to the previous proceedings, that the proprietors will be prejudiced by the

absence of provision in this Statute for notice to them previous to the accruing of the Commission's right to take possession.

This Act could scarcely be regarded as an exception from the ordinary class of Expropriation Acts were it not for the pending proceedings affected thereby, and for the direct method by which the lands are divested. These exceptions are, however, said to be justified by the necessity of the case, and the urgency of making immediate provision for the Exhibition Grounds.

The undersigned does not consider, in view of the undoubted authority of the Legislature, that a case has been made out in which the power of disallowance should be exercised.

Chapter 27. An Act to amend Chapter 79 of the Revised Statutes of Nova Scotia, Fifth Series, entitled "Of Joint Stock Companies."

Chapter 81. An Act to incorporate the Dominion Eastern Railway Company, Limited.

Chapter 82. An Act to incorporate the Granville and Victoria Beach Railway and Development Company, Limited.

Chapter 83. An Act to incorporate the Inverness Railway Company, Limited.

Chapter 95. An Act to incorporate the Acadia Pulp and Paper Mills Company, Limited.

Chapter 102. An Act to incorporate the Victoria Oil Company, Limited.

Chapter 103. An Act to incorporate the Bridgewater Power Company, Limited.

Chapter 104. An Act to incorporate the Shelburne Lumber Company, Limited.

Chapter 105. An Act to incorporate the Dominion Granite Company, Limited.

Chapter 109. An Act to incorporate the Cow Bay Gold Mining Company, Limited.

Chapter 111. An Act to incorporate the S. P. Benjamin Company, Limited.

Chapter 112. An Act to incorporate Gunn and Company, Limited.

Each of these Statutes contains a section professing to confer capacity upon aliens. The undersigned considers that the authority of these provisions is open to doubt, inasmuch as exclusive legislative authority with regard to aliens has been committed to Parliament.

The undersigned would here refer to the Report of Sir Charles Hibbert Tupper, when Minister of Justice, approved by Your Excellency on the 13th November, 1895, in which comment is made upon certain Statutes of the Province of Nova Scotia, passed in the year 1895, containing similar provisions.

Chapter 52. An Act to enable the Inhabitants of Lawrencetown to supply themselves with Water for Domestic, Fire and other purposes.

Chapter 63. An Act to provide for supplying the Town of Parrsboro' with water.

Chapter 103. An Act to incorporate the Bridgewater Power Company, Limited.

Chapter 104. An Act to incorporate the Shelburne Lumber Company, Limited.

Chapter 106. An Act to incorporate the Enterprise Water Supply Company, Limited.

Each of these Acts contains a provision in effect authorizing the Company to enter upon the beds of rivers and take water therefrom or construct works therein. The question upon which the validity of such provisions depend is now awaiting decision by the Judicial Committee of the Privy Council.

The undersigned does not consider it necessary to do more than call attention to the fact that these provisions in so far as they refer to navigable waters or to rivers which belong to the Dominion are claimed by the Dominion authorities to be *ultra vires*, and he refers to his remarks upon Chapters 44, 97 and 101 of the Statutes of Nova Scotia, passed in the year 1896, as set forth in his Report upon those Statutes, approved by Your Excellency on 13th November last.

Chapter 95. An Act to incorporate the Acadia Pulp and Paper Mills Company, Limited.

Chapter 97. An Act to incorporate the Cape Breton Oil Company, Limited.

Chapter 98. An Act to incorporate the Cape Breton Iron Company, Limited.

- Chapter 100. An Act to incorporate the Nova Scotia Lumber Company, Limited.
 Chapter 102. An Act to incorporate the Victoria Oil Company, Limited.
 Chapter 105. An Act to incorporate the Dominion Granite Company, Limited.
 Chapter 107. An Act to incorporate the Oriental Gold Mining and Development Company, Limited.
 Chapter 109. An Act to incorporate the Cow Bay Gold Mining Company, Limited.

These Statutes contain provisions authorizing the Companies to construct railways or telegraph and telephone lines without defining the points between which such works are to be constructed. Some of these Acts also authorize the Companies to acquire or construct ships and transport freight and passengers from places in Nova Scotia without indicating the places to which such freight and passengers may be carried.

The undersigned observes that the authority of a Provincial Legislature to legislate with regard to local works and undertakings is limited so as to exclude lines of steam or other ships, railways, canals, telegraphs and other works or undertakings connecting the Province with any other or others of the Provinces or extending beyond the limits of the Province, and he observes that the authority conferred by these provisions, must be, and he presumes is, intended to be construed as limited to works and undertakings which may competently be authorized by a Legislature.

The undersigned considers it sufficient at present to call attention to the absence from these Statutes of any express limitation to Provincial territory of the undertakings mentioned, and to suggest the propriety of enacting proper limiting clauses at the next Session of the Legislature so that no one may be misled as to the nature or extent of the power intended to be conferred.

Chapter 113. An Act to incorporate the Missiquash Marsh Company, Limited.

By the first Section of this Act certain persons are incorporated for the purpose and with the power as therein expressed "to purchase or otherwise acquire bog, lake, marsh and other lands, and water power, and privileges in the Counties of Cumberland, Nova Scotia, and Westmoreland, New Brunswick, or elsewhere, and to drain, irrigate, cultivate and improve, lease and sell the same in whole or in parts; to purchase, own and operate steam or other dredges or ditching machines and excavators, or any other machinery advisable, and to acquire and make sale of any real or personal property, easements, leases, rights or privileges, necessary or incidental to the business of the Company, to make aboideaux, ditches, canals, dykes, breakwaters, bridges, embankments, roads, reservoirs, aqueducts for draining, irrigating or other purposes connected with the business of the Company." The only authority conferred upon a Provincial Legislature to incorporate Companies is for "the incorporation of Companies with Provincial objects." The undersigned construes this authority to mean objects provincial as to the Province creating the corporation. In the case of the Colonial Building Investment Association versus the Attorney General of Quebec, 9 Appeal cases, 157, the appellant Company had been incorporated by the Parliament of Canada with power throughout the Dominion to acquire and hold lands, construct houses, sell and dispose of such property, lend money upon mortgages, and deal in public securities. There can be no doubt that a Provincial Legislature could have incorporated a Company with authority to exercise the same powers within the limits of the Province, yet in delivering the judgment of their Lordships of the Judicial Committee, Sir Montague E. Smith held that inasmuch as the Company was incorporated to carry on its business throughout the Dominion, the Parliament of Canada could alone constitute a Company with these powers.

It would seem to follow that the Statute in question which confers upon the Company authority to acquire, cultivate, improve and sell lands not only in the Province of Nova Scotia, but also in the Province of New Brunswick and elsewhere, is not limited to Provincial objects in the sense in which that expression is used in the British North America Act, and, therefore, that the enactment is *ultra vires*.

The undersigned considers that this view should be submitted to the Provincial Government, and that the Statute should be disallowed unless Your Excellency's Government is assured that it will be amended within the time limited for disallowance by repealing the authority so far as extra Provincial territory is concerned.*

Chapter 157. An Act to incorporate the Indian Point Cemetery Company, in the Township and County of Lunenburg.

This Statute incorporates a Cemetery Company. Section 17 provides that any person who shall wilfully destroy or injure or carry away any fence, monument, mound, embankment, tree or plant, or any property in the burying ground shall be punished by a fine not less than four dollars nor more than forty dollars, or be committed to the common jail for the space of not more than sixty days, according to the nature of the offence. This Section appears to relate to the subject of criminal law, and the subject of wilful and malicious injury to property has already been dealt with by the Parliament of Canada under the Criminal Code, 1892. The undersigned does not, however, consider the objection sufficiently serious to warrant the disallowance of the Act, the object aimed at being the preservation of property, and the question being one which may be determined by the courts in any case in which it may arise.*

The undersigned recommends that the Statutes mentioned in this Report, other than Chapter 113, be not disallowed, and that a copy of this Report, if approved, be transmitted to His Honour the Lieutenant Governor of the Province for the information of his Government, with the request that he should inform Your Excellency's Government, as soon as convenient, whether or not the amendment suggested will be made in respect of Chapter 113.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 4 September, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 24th August, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon Chapter 2 of the Statutes of the Province of Nova Scotia, passed in the sixtieth year of Her Majesty's reign (1897), and received by the Secretary of State on the 2nd July, 1897.

The undersigned has received two letters from His Honour Judge Savary, Judge of the County Court for District No. 3 in the Province of Nova Scotia, also a letter from Mr. T. C. Shreve, Q. C., enclosing a copy of a letter from Judge Savary addressed to him and which he has forwarded to the undersigned upon the Judge's request. In these letters Judge Savary urges certain objections to this Statute. The letters are submitted herewith.

The undersigned observes that before and since Confederation, there have been in Nova Scotia, Courts known as Probate Courts, which have exercised the ordinary jurisdiction with reference to letters of probate and administration and the settlement of the estates of deceased persons. In most cases a Court has been established for each County with a Judge and Registrar for each Court, but in one or two cases a County has been divided into two districts, each with a separate Court. No salaries have been paid to the Judges or Registrars, but they have been allowed to take fees established by law. The present Act confers new jurisdiction in non-contentious matters upon the Registrars of Probate, and continues the jurisdiction of the Probate Courts substantially as heretofore, but provides that when the

* See letter from Attorney General Longley of date 7th October, 1897, on page 294 post.

office of Judge of any Probate Court shall become vacant, the Judge of the County Court within whose jurisdiction the vacancy occurs shall become Judge of such Probate Court. Except as to the County of Halifax, the district of each County Court Judge comprises three counties.

Under Section 96 of the British North America Act, the Governor General is to appoint the Judges of the Superior, District and County Courts (except those of the Courts of Probate in Nova Scotia and New Brunswick), and under Section 100 the salaries, allowances and pensions of the Judges of the Superior, District and County Courts (except in the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in cases where the Judges thereof are for the time being paid a salary, shall be fixed and provided by the Parliament of Canada. Nothing is said as to the appointment or salary of Probate Judges in Nova Scotia and New Brunswick, but it was doubtless intended that they should be appointed by the Province and that the Province should have authority to legislate with regard to their salaries, and that is the construction of the Act which has heretofore been acted upon.

The offices of County Court Judge and the office of Probate Judge do not conflict, and it does not seem to be seriously urged that a County Court Judge cannot perform his duties as such consistently with the execution of the additional office imposed upon him by this Act. Judge Savary, who is the only person who has offered any complaint, says that the Judges would undertake the Probate work in connection with their other work if an allowance were made by way of increase of salary and for travelling expenses, and in his later communication he states that he proposes to discharge the Probate duties with all the energy and zeal in his power, but in his own chambers at Annapolis, where he resides, until the Local Legislature makes provision for his expenses while out of the County, and he states that upon his construction of the Act he is not required to hear Probate cases elsewhere than at his chambers, except in his own discretion. If a Provincial Legislature should impose on County Judges duties which may not be consistent with the interests of the Dominion, the Dominion has protection in the power of disallowance; but the undersigned sees no sufficient reason for the exercise of such power on that ground here.

In the case of Valin vs. Langlois, 5 Appeal cases, 115, the Judicial Committee decided that the Parliament of Canada has power to impose new duties upon existing Provincial Courts, and give them powers as to the matters coming within the classes of subjects over which Parliament has jurisdiction, and, therefore, that Parliament might confer upon the Provincial Courts the jurisdiction of the Controverted Elections Act.

In like manner it seems to the undersigned that the Provincial Legislatures may impose new duties upon Provincial Courts as to matters within the jurisdiction of the Provincial Legislatures. The fact that a County Court Judge is required to perform the additional duties under another name does not appear to the undersigned to present any real difference.

The undersigned is of opinion, therefore, that there is no constitutional objection to this Act, and that the grounds urged by Judge Savary do not afford any reason for disallowance, although they may support a claim against the Provincial authorities for remuneration for the extra work imposed.

The undersigned has the honour to recommend, therefore, that the Statute in question be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Judge Savary to the Minister of Justice

ANNAPOLIS ROYAL, N.S., 26th February, 1897.

The Honourable Sir Oliver Mowat, K.C.M.G., Minister of Justice for Canada.

SIR,—May I respectfully ask leave to call your attention to a Bill now before the Local Legislature of Nova Scotia, copy of which I enclose. By this measure it is proposed to cast on the County Court Judges of Nova Scotia, who are the Officers of the Government of Canada, all the work of the Probate Court without any remuneration; but on the contrary, to make the salary and allowance made to these Judges by the Dominion Government available for the payment for their services as Judges of Probate. I would in this connection further call the attention of His Excellency in Council to Section 100 of the British North America Act. By that section the Government of Canada is exempted from paying the salaries of the Judges of Probate of Nova Scotia and New Brunswick. Can it be possible that it was contemplated by this Act that it should be in the power of a Provincial Legislature to compel Judges appointed and paid by the Dominion Government and Parliament, to perform the duties of another well-known and long established Court gratuitously. I submit the case is by no means the same as the conferring on us jurisdiction under the Speedy Trials Act. The latter was only an enlargement of our jurisdiction as Magistrates, and was accepted by the County Court Judges without any complaint, and being in the way of administering the criminal law of the Dominion, was fairly included in the services for which the Judges are paid their salaries by the Dominion Government. But the "contentious business" of the Court of Probate, which means all the real work done in that Court by the Judge, will about double the labour entailed on the County Court Judges of this Province, and render an increase in our number necessary; and as the Judges are to be paid by the Dominion Government and by provision of the Parliament of Canada, I beg to suggest that by reason of this measure the Dominion Parliament will be obliged, in that indirect way, to provide the salaries of the Judges of Probate in this Province. Should an Insolvent Act pass it will be impossible for a County Court Judge to do the work of the three Courts, and it may become necessary for the Dominion Parliament to constitute a separate Court to administer the Insolvent Act; while the time of the Judges paid by provision of Parliament is occupied in the work of the Probate Court, with which Parliament has nothing to do under Section 100, British North America Act.

It may be necessary to explain that outside of Halifax the Judges of the County Courts have each three Counties grouped together in a District, to preside over, except in one instance, where a Judge has two large and extensive Counties, and these additional Counties, the Court in each of which is a Separate Court, are in lieu of Division Courts—the Judge merely hearing an appeal and trial *de novo* in small matters, which are tried in the first instance in inferior tribunals—stipendiary and other magistrates, and that the jurisdiction of the County Courts extend from \$20 to \$400 in amount in all cases of contract and *tort*, except those few generally excepted from the jurisdiction of the inferior courts.

The popularity of this Bill, it is acknowledged by its promoters consists in the abolishing the fees which the present Judges of Probate, of which there is one in each County, receive out of the Estates, and compelling the Dominion paid Officer to do it in part return for the salary which he receives from the Government of Canada. In a similar spirit an agitation was long kept up in the Local Legislature to compel the Dominion Government to pay the expense of criminal prosecutions in the Province. There is more reason in that contention than there is for what is now proposed, in respect to the Probate Court which is purely a local Court, with which, or the laws which are administered by it, the Parliament of Canada has nothing to do.

The fees in each of the three Counties over which I preside, collected by the present Judges of Probate, are probably about \$500 for each County. No doubt the Judges would undertake this work in conjunction with their other work, at considerably less than the gross amount of these fees, with an allowance for travel to the Counties in which he does not reside; but it is submitted that to pass this Bill without providing either by fees or out of the local revenue for their services and expenses, would be contrary to the provisions of Section 100, British North America Act; and to the general policy of the laws regulating the relations of the Provincial and Dominion Parliaments, and the position of the Judges in respect to each.

By another Act, not to be pressed this Session, it is proposed to abolish the present County and Supreme Courts, and to substitute an Appeal Court and a Superior Court, increasing the whole number of Judges by two, increasing the number of County Judges; so there will be one for every two Counties. I submit this increase must be intended to accommodate the business of the Probate Court, and indirectly compel the Parliament of Canada to provide for the salaries of the Judges of Probate. I humbly submit that neither of these measures should receive the assent of His Excellency the Governor General, without some provision, and that not merely a colourable one, for the services of the Judges as Judges of Probate, by the Local Government. The Act complained of seems cleverly framed to prevent a general complaint from the County Court Judges by providing that the duties shall not devolve on the Judge of the County Court in any County, until a vacancy occurs in the office of Judge or Registrar of Probate; but two vacancies are likely in the course of nature to occur in my district soon, and that not in the County in which I reside, but adjacent Counties, one of them 87 miles distant.

I am anxious to be heard by Counsel or in person before you, unless your mind is sufficiently clear from the facts I have stated, that this measure, in view of Section 100, British North America Act, and other considerations of policy, should not be allowed to become law.

All of which is very respectfully submitted by your obedient servant,

A. W. SAVARY,

*Judge of the County Courts for the Counties of Annapolis,
Digby and Yarmouth, Nova Scotia.*

Judge Savary to Mr. T. C. Shreve, forwarded to the Minister of Justice 22nd July, 1897, at request of Judge Savary.

ANNAPOLIS, N.S., 21st July, 1897.

MY DEAR MR. SHREVE,—Your favour of the 21st is received. Can you point out anything in the Probate Act of 1897 which requires me to try contentious Probate business outside of the County where I reside, without any indemnity for my travelling expenses? I believe if there are any provisions of the kind, they are of doubtful validity.

I will be happy to appoint a day here in Annapolis for the hearing of the contentious business in the estate of the late Honourable C. Campbell, but I don't think the Local Legislature has the power to compel me to go to Digby to do this business on my own expenses.

I would be glad to have you send this letter to the Honourable Sir O. Mowat, Minister of Justice, to whom I have forwarded a memorial in relation to the extraordinary legislation of last session on this subject.

Meanwhile I am willing to appoint any day after my vacation in order to hear the matter of the Campbell estate, at my chambers in Annapolis—perhaps earlier.

Yours truly,

A. W. SAVARY.

Judge Savary to the Minister of Justice

ANNAPOLIS ROYAL, N.S., 26th July, 1897.

The Honourable the Minister of Justice:

SIR,—The “Act to amend and consolidate the Acts respecting the Probate Courts of Nova Scotia,” concerning which I memorialized the Department during its passage through the Local Legislature, was, I find, very materially amended after my complaint was made, of which I was not aware during my correspondence with Mr. Russell on the subject during the recent Session of Parliament. The provision to compel the Judge to attend outside of his County to do the work arising in any other County, seems to be omitted from the Act as it does not appear in the copy as printed in the local Acts of 1897. By Section 8 of the Act, the Judge of the County Court is to sit for the hearing of “contentious business” in the County in which the business arises *or at his chambers*, in his own discretion. As the Registrar of Probate for the County of Digby had died, and the Judge there has become Registrar, the duties in contentious business devolve on me, and I shall discharge them with all the energy and zeal in my power, but at my own chambers at Annapolis until the Local Legislature make provision for my expenses out of the County. And I have yet a hope that in view of the remuneration given such Judges in Ontario, the Local Legislature, under the advice of your Department to the Attorney General, may yet make some allowance to us for our work. With great respect.

Your obedient servant,

A. W. SAVARY.

The Attorney General to the Under Secretary of State.

HALIFAX, N.S., 7th October, 1897.

SIR,—Referring to the report of the Honourable Sir Oliver Mowat, Minister of Justice, under date of 18th August, 1887, and of the minute of the Privy Council of Canada, under date of 27th August, 1897, respecting the provisions of Chapter 113 of the Acts of Nova Scotia, 1897, entitled “An Act to incorporate the Misisquash Marsh Company, Limited,” I beg to report as follows:—

I have examined carefully the report of the Honourable the Minister of Justice touching the provisions of that Act, and I beg to advise that I think his objections are well founded. I have put myself in communication with the incorporators, and I find that they are disposed to recognize the fairness of the objections urged by the Minister.

I therefore advise that it would be desirable to intimate to the Secretary of State for the information of the Department of Justice that a measure would be introduced at the next Session of the Legislature repealing all that portion of the Act which gave the Company corporate rights in the Province of New Brunswick, and so amend the Act as to limit its application entirely to the Province of Nova Scotia.

J. W. LONGLEY,

per L.E.P.

NOTE.—The Act in question was amended in the manner indicated in the above letter See N. S. Statutes, 61 Victoria (1898), chapter 171.

61st VICTORIA, 1898

1ST SESSION—32ND GENERAL ASSEMBLY

(Approved 17 day of December, 1898.)

DEPARTMENT OF JUSTICE, OTTAWA, 21st November, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Nova Scotia, passed in the sixty-first year of Her Majesty's reign (1898), and received by the Secretary of State for Canada on 15th July, 1898, and he is of opinion that these Statutes may be left to their operation, without comment, with the exception of two, viz:—

Chapter 38. "An Act to amend Chapter 106, Revised Statutes, of Juries."

Section 1 of this Chapter provides that hereafter the number of grand jurors to be summoned at any term of the Supreme Court in any County shall be twelve and no more, instead of twenty-four as at present; and Section 2 provides that seven grand jurymen shall be competent to find a true bill in any matter, instead of twelve.

It is provided by Section 662 by the Criminal Code as amended by 57-58 Victoria, Chapter 57, Section 1, that "notwithstanding any law, usage or custom to the contrary, seven grand jurors, instead of twelve as heretofore, may find a true bill in any Province where the panel of grand jurors is not more than thirteen." It follows that Section 2 of the Act in question is therefore a restatement of Dominion law upon the subject. If Section 1, reducing the number of grand jurors to twelve is *intra vires*, and it may be implied from the amendment of Section 662 of the Criminal Code referred to that it was considered by Parliament that Provincial Legislatures had authority to legislate as to the numbers constituting the panel of grand jurors.

The undersigned does not, however, consider the question free from doubt, but as similar legislation has been left to its operation in one or more of the other Provinces, and in view of the provision of the Criminal Code above mentioned, the undersigned considers that it would not be proper to disallow the present Statutes, but that the propriety of confirming such legislation by Parliament should be considered.

Chapter 153. "An Act to Incorporate the Maritime Transportation and Salvage Company, Limited."

Among the powers conferred upon the Company are included the power to purchase, hire, charter, navigate and maintain steamships, sailing vessels, and all other kinds of craft, including tugs and barges, for the carrying and conveying of passengers, mails, goods, chattels, wares and merchandise between Halifax and other ports in the Dominion of Canada and Newfoundland, and to and from and between said ports, and to prosecute and carry on the business of common carriers of goods, etc.

The power of a Provincial Legislature to legislate with regard to local works and undertakings is subject to the exceptions stated in the following terms: "(a) Lines of steam or other ships * * * * * connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province; (b) Lines of steamships between the Province and any British or Foreign Country."

It is clear, therefore, that the conferring of the powers referred to is in excess of the authority of a Provincial Legislature, and for that reason it would become the duty of the undersigned to recommend disallowance of the Statute were it not that the Attorney General of Nova Scotia has undertaken to introduce legislation at the next Session of the Provincial Legislature to amend the Statute.

The undersigned submits herewith copies of the correspondence which has taken place between the Deputy Minister of Justice and the Attorney General, which sets forth the grounds of objection, and the agreement arrived at.

For these reasons the undersigned recommends that these Statutes be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 13th October, 1898.

SIR,—In perusing the Statutes of the Province of Nova Scotia, passed at the last Session of the Legislature, I have noted Chapter 153, intituled "An Act to incorporate the Maritime Transportation and Salvage Company, Limited," as one which should be called to your attention. You will observe that this Statute professes to authorize the Company, among other things, to acquire and maintain steamships and other vessels for the carrying of passengers between Halifax and other ports in the Dominion of Canada and Newfoundland, and generally between such ports to carry on the business of common carriers. At present I do not think of any reason for holding that powers of this character are not excluded from Provincial authority by the exception under paragraph 10 of Section 92 of "British North America Act," and if so, the case would seem to be one for disallowance. If you differ from my view, will you be good enough to submit the reasons for your opinion for the consideration of the Minister.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,
D.M.J.

The Attorney General to the Deputy Minister of Justice.

HALIFAX, N.S., 29th October, 1898.

DEAR SIR,—I beg to inclose an elaborate legal argument from Mr. G. A. R. Rowlings, barrister, who is one of the incorporators of the Maritime Transportation and Salvage Company, whose charter you seem to think open to question.

I only wish to add that Mr. Rowlings in a letter desired me to say to the Department that if they were not satisfied with this exposition of the law, he wished to be especially heard before disallowance should take place.

Yours very truly,

J. W. LONGLEY.

E. L. NEWCOMBE, Esq.,
Deputy Minister of Justice.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 7th November, 1898.

SIR,—I have the honour to acknowledge the receipt of your letter of the 29th ultimo, inclosing Mr. Rowlings' argument with regard to the charter of the Maritime Transportation and Salvage Company.

I had previously received a communication from Mr. Rowlings dated 22nd ultimo, inclosing a copy of what seems to be the same argument, covering thirteen

typewritten pages, in which he states that he has been somewhat pressed for time in the matter, and has not had an opportunity to cover all the grounds that he would like. He adds that if I desire additional arguments he would be pleased to furnish me with what matter he can obtain. I had acknowledged his letter with the inclosure and informed him that the matter would be considered. I have not asked him for any additional argument, however, because a perusal of the one submitted has not led me to desire any, and because I conceive that in these matters we should look to the provincial authorities for reasons upholding their legislation rather than to private individuals who may be interested in sustaining it, though, of course, the Minister will always be glad to consider any reasons from whatever source produced which the Attorney General of the Province may consider proper to put forward.

I observe that you do not advance any reasons of your own in support of the Statute. You inclose Mr. Rowlings' memorandum and state that he desires to be specially heard before disallowance. I may say that such a hearing would be an unusual proceeding, and, so far as I am concerned, I doubt whether any advantage would accrue from it. It may be, however, that you would desire to hear Mr. Rowlings and afterwards consider whether you should make any representation in the matter.

I observe that Mr. Rowlings concludes his memorandum with the statement that he presumes that the exercise of the power of disallowance in this case would in any event be confined to the words in section 2 (a) reading "between Halifax and other ports in the Dominion of Canada and Newfoundland." But His Excellency could not, as you are doubtless aware, use the power of disallowance for the purpose of amending the Statute. The power if exercised must affect the Statute in its entirety. I am under the impression, however, that this Government would be satisfied to leave the Statute to its operation in the meantime if you would undertake on behalf of the Legislature to amend the Statute within the time limited for disallowance by striking out the words "between Halifax and other ports in the Dominion of Canada and Newfoundland, and to and from and between said ports" in section 2 (a), and by adding a proviso applicable to the whole Statute that nothing therein contained shall authorize the company to establish, maintain or operate any line or lines of steam or other ships connecting the province with any other or others of the provinces or extending beyond the limits of the province, or between the province and any British or foreign country. If such a proposal would be satisfactory to you, I shall be glad to submit it for the consideration of the Government.

Awaiting your reply,

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

D.M.J.

The Attorney General to the Deputy Minister of Justice.

HALIFAX, N.S., 12th November, 1898.

DEAR SIR,—I have your communication touching the legislation embraced in an Act to incorporate the Maritime Transportation and Salvage Company, and I beg to say that I concur in your proposition and I shall be prepared at the next Session of the Provincial Legislature to introduce an Act to make the amendments proposed in your letter,* and I think that this affords the best solution in respect of the matter in dispute.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 21st November, 1898.

SIR,—I have the honour to acknowledge the receipt of your letter of the 12th instant, with regard to the Statute incorporating the Maritime Transportation and Salvage Company, Limited, in which you state that you concur in my proposition, and will be prepared at the next session of the Legislature to introduce an Act making the amendments proposed in my former letter.

In these circumstances I am to state that the Minister will not at present recommend the disallowance of the Act.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

D.M.J.

NOTE.—The Act in question was amended by 62nd Victoria, chapter 161, Nova Scotia statutes, 1899.

62ND VICTORIA, 1899

2ND SESSION—32ND GENERAL ASSEMBLY

(Approved 18 November, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 11th November 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of the province of Nova Scotia, passed in the sixty-second year of Her Majesty's reign (1899), and received by the Secretary of State for Canada on 25th July last, and has the honour to report that these statutes may be left to their operation without comment, excepting, however, Ch. 16, 126 and 163, as to which the undersigned considers it necessary to make the following observations:—

Chapter 16. "An Act to amend Ch. 86 of the revised statutes of the Property and Civil Rights of Aliens."

This chapter in so far as it relates to the subject of aliens, is subject to the remark that it affects a matter beyond the jurisdiction of the legislature. The undersigned is not satisfied that the statute does strictly relate to aliens, although it is introduced as an amendment to a statute of long standing in Nova Scotia respecting property and civil rights of aliens, and he considers that the statute ought to be allowed to stand for such operation as it may properly have.

Chapter 126. "An Act to incorporate the Cape Breton Railway Extension Company, Limited."

This Act provides for the incorporation of a company with power among other things to build, maintain, control and work a bridge, tunnel or ferry over at or under the Straits of Canso. The Straits of Canso being a navigable channel of the sea are, so far as navigation and shipping are concerned, within the exclusive legislative authority of the parliament of Canada. and while it may be competent to the legislature of Nova Scotia to incorporate a company with capacity to construct the works in question, yet it would require authority from parliament to authorize the company to construct any works in these waters, which would or might have the effect of interfering with navigation or shipping.

The undersigned assumes that the statute is not intended to do more than confer such capacity in this respect as the provincial legislature is constitutionally able to give, and that it is contemplated, in the event of the company desiring to exercise the power referred to, the necessary authority will be first sought and obtained from parliament, or that the existing requirements of parliament in such cases will be first complied with.

Chapter 163. An Act to amend chapter 190 of the Acts of 1890, entitled "An Act to incorporate the Inverness Mining and Transportation Company, Limited, and Acts in amendment thereof, and to change the name thereof to the Mabou Coal Mining Company, Limited."

This statute makes certain amendments to the Act of incorporation of the Inverness Mining and Transportation Company, Limited. The company was incorporated by Ch. 190 of the Nova Scotia statutes of 1890, and by Ch. 130 of the statutes of 1895, the name of the company was changed to the Nova Scotia Coal and Gypsum Company, Limited. The Act now in question, among other things, provides that the name of the company shall be "The Mabou Coal Mining Company, Limited."

The undersigned has received a communication, dated 29th June, 1899, signed by the Nova Scotia Coal and Gypsum Company, Limited, by Lewis McKeen, president, requesting that the present Act be disallowed for the following reasons:—

"1. That it was introduced, acted upon and passed without the knowledge, consent or wishes of any one interested in or authorized by the company formed under the original Act of 1890 and amendment of 1895.

"2. That it was obtained by false statements and representations to the member who introduced it, on the day before the House prorogued, and by persons who had no rights or interests either in the charter of 1890, nor the present company.

"3. That it affects the validity and credit and standing of the present company, the Nova Scotia Coal and Gypsum Company, Ltd., duly and legally organized under the Act of 1895, chap. 131, on the 5th of June, 1895; also the value and legality of the shares issued under it.

"4. That it affects the titles of said company to and in certain properties, leases, mills and quarries which it has held, owned, purchased and occupied since its organization in 1895, by deeds and titles, registered in the registrar's office at Port Hood.

"5. That the said company is and has been in legal, continuous, and effective operation, and has been guilty of no lapse, act or other deed by which it should be deprived of its rights, titles, investments, properties or business without its knowledge or consent or without trial, condemnation and expropriation under due course of law and compensation."

On 14th July last, the undersigned caused to be referred to the Attorney General of Nova Scotia a copy of the letter of the Nova Scotia Coal and Gypsum Company, Limited, for the consideration of the Attorney General, and any observations which he might desire to make upon the objections raised by the company. The Attorney General replied on 31st July last, stating as follows:—

"I have carefully read petition of the Nova Scotia Coal and Gypsum Company to His Excellency the Governor General, asking for the disallowance of Ch. 163 of the Acts of 1899.

"I have consulted with Mr. Doucet, M.P.P., who introduced the Act and he advised me that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He afterwards discovered that this was a mistake and expressed his regret for having introduced the Act, and his personal willingness that it should be disallowed. I have

seen Mr. A. A. McKay upon the subject, and he advises me that he prepared and introduced the Act on "the representations of certain persons concerned in the company, but he finds since that it was not with the consent of all; and he thinks that the Act was probably an improper one, and is content that it should be disallowed."

Afterwards, on August 3, the deputy of the undersigned wrote Mr. McKeen as follows:—

"Adverting to your letter of 29th June last, with which you inclose for consideration copies of three Acts of the legislature of Nova Scotia relating to the Inverness Mining & Transportation Company, Ltd., viz.:—Ch. 190, Acts of 1890; Ch. 131, Acts of 1895, and Ch. 163 of the Acts of 1899, and requesting that the last-named Act be disallowed for certain reasons therein set forth, I have the honour to inform you that upon reference of your petition to the Attorney General of Nova Scotia, the Attorney General reports that he has consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advises him that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He says he afterwards discovered that this was a mistake, and expressed regret for having introduced the Act, and his personal willingness that it should be disallowed. Mr. Longley also states that he has seen Mr. A. A. McKay upon the subject and he advises him that he prepared and introduced the Act on the representations of certain persons concerned in the company, but that he has found since that it was not with the consent of all; and he thinks that the Act was probably an improper one, and is content that it should be disallowed.

"The Attorney General adds that as all the parties concerned seem to agree that the Act should be repealed at the next session of the legislature, the only question to be considered is whether the circumstances of the case involve so much personal injury to any person as to render such a step as disallowance necessary.

"In these circumstances I do not suppose that the power of disallowance would ordinarily be exercised, and unless some reason can be shown why justice would not be done by the remedy of repeal, I do not anticipate that the minister would advise disallowance."

To this communication no reply has been received.

The undersigned assumes, therefore, that at the ensuing session of the provincial legislature the Act now in question will be repealed. It seems to have been enacted through mistake and not to be desired by any one. These are not circumstances in which, in the opinion of the undersigned, the power of disallowance should be invoked. The subject is one entirely within the authority of the legislature of Nova Scotia, and doubtless the legislature will set the matter right.

For the reasons above stated the undersigned does not consider that any of the statutes mentioned or referred to in this report should be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Nova Scotia Coal and Gypsum Co. (Ltd.) to the Minister of Justice.

NOVA SCOTIA COAL AND GYPSUM CO., LTD.,

MABOU, CAPE BRETON, N.S., 29th June, 1899.

SIR,—The undersigned company has the honour to inclose for your consideration copies of three Acts of the legislature of this province relating to the Inverness Mining and Transportation Company, Ltd., viz., Chap. 190, Acts of 1890; Chap. 131, Acts 1895; Chap. 163, Acts 1899.

And to respectfully request that the last named Act, passed 30th March, 1899, and noted as chapter 163, Acts 1899, be disallowed, annulled and set aside for the following reasons:—

1. That it was introduced, acted upon and passed without the knowledge, consent or wishes of any one interested in or authorized by the company formed under the original Act of 1890 and amendment of 1895.

2. That it was obtained by false statements and representations to the member who introduced it, on the day before the House prorogued, and by persons who had no rights nor interests either in the charter of 1890, nor the present company.

3. That it affects the validity and credit and standing of the present company, the Nova Scotia Coal and Gypsum Company, Limited, duly and legally organized under the Act of 1895, Chap. 131, on the 5th of June, 1895; also the value and legality of the share issued under it.

4. That it affects the titles of said company to and in certain properties, leases, mills, and quarries which it has held, owned, purchased and occupied since its organization in 1895, by deeds and titles registered in the registrar's office at Port Hood.

5. That the said company is and has been in legal, continuous and effective operation, and has been guilty of no lapse, act or other deed by which it should be deprived of its rights, titles, investments, properties or business without its knowledge or consent, or without trial, condemnation and expropriation under due course of law and compensation.

We have, &c.,

NOVA SCOTIA & GYPSUM CO., LTD.,

BY LEWIS MCKEEN, *President.*

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 14th July, 1899.

SIR,—I have the honour to inclose herewith copy of a letter which I have received from the Nova Scotia Coal and Gypsum Company, Limited, asking for the disallowance of Chap. 163 of the Nova Scotia Statutes of 1899, upon the grounds stated therein.

I am to state that the minister will be glad to consider any observations which you may desire to make upon the objections raised by the company.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Attorney General to the Deputy Minister of Justice.

HALIFAX, N.S., 31st July, 1899.

DEAR SIR,—I have carefully read petition of the Nova Scotia Coal and Gypsum Company to His Excellency the Governor General, asking for the disallowance of Ch. 163 of the Acts of 1899.

I have consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advises me that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He afterwards discovered that this was a mistake, and expressed his regret for having introduced the Act and his personal willingness that it should be disallowed. I have seen Mr. A. A. McKay upon the subject and he advises me that he prepared and introduced the Act on the representations of certain persons concerned in the company, but he finds since that it was not with the consent of all; that he thinks the Act was probably an improper one, and is content that it should be disallowed.

I have no opinions of my own at all. I think very likely that the disallowance of the Act would do no harm to anybody. At the same time it is an Act entirely within the competence of the provincial legislature, and, as all the parties concerned seem to agree that it should be repealed at the next session of the legislature, the only question to be considered is whether the circumstances of the case involve so much personal injury to any person as to render such a step as disallowance necessary.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to the President Nova Scotia Coal and Gypsum Company (Ltd.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd August, 1899.

SIR,—Adverting to your letter of June 29 last, with which you enclose for consideration copies of three Acts of the legislature of Nova Scotia relating to the Inverness Mining and Transportation Company, Limited, viz.: Chap. 190, Acts of 1890, Chap. 131, Acts of 1895, and Chap. 163 of the Acts of 1899, and requesting that the last named Act be disallowed for certain reasons therein set forth, I have the honour to inform you that upon reference of your petition to the Attorney General of Nova Scotia, the Attorney General reports that he has consulted with Mr. Doucet, M.P.P., who introduced the Act, and he advises him that he did so at the instance of Mr. A. A. McKay, barrister, on the assurance that the enactment was desired by the company. He says he afterwards discovered that this was a mistake and expressed regret for having introduced the Act, and his personal willingness that it should be disallowed. Mr. Longley also states that he has seen Mr. A. A. McKay upon the subject and he advises him that he prepared and introduced the Act on the representations of certain persons concerned in the company, but that he has found since that it was not with the consent of all; and he thinks the Act was probably an improper one, and is content that it should be disallowed.

The Attorney General adds that as all the parties concerned seem to agree that the Act should be repealed at the next session of the legislature, the only question to be considered is whether the circumstances of the case involve so much personal injury to any person as to render such a step as disallowance necessary.

In these circumstances I do not suppose that the power of disallowance would ordinarily be exercised, and unless some reason can be shown why justice would not be done by the remedy of repeal, I do not anticipate that the minister would advise disallowance.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

(Approved 3 July, 1900.)

DEPARTMENT OF JUSTICE, OTTAWA, 28th June, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit herewith copies of correspondence which has taken place between the Deputy Minister of Justice and the Attorney General of Nova Scotia with regard to chapter 4 of the Acts of Nova Scotia, 1899, intituled "An Act respecting foreshores and beds of rivers and lakes."

Inasmuch as the grounds of objection to the Act, the provincial argument in support of it, and the conclusion which has been reached between the undersigned and the Attorney General appear fully upon the correspondence, it is not necessary for the undersigned in this report to say more than that the undersigned would have felt bound to advise disallowance, for the reasons stated in the correspondence, had it not been for the undertaking of the Attorney General, confirmed as it is by a minute of the Lieutenant Governor in Council, to have the Act amended at the next session of the local legislature, by repealing section 10, and declaring that the Act was not and is not intended to have any application to public harbours within the meaning of the expression as used in the 3rd schedule of the British North America Act.

In view of the undertaking referred to, however, and having regard to the reasons urged by the Attorney General for retaining those provisions of the Act to which no objection has been made, the undersigned considers that it will be consistent with the public interest to leave this Act to such operation as it may have until the legislature meets, when, no doubt, the Act will be amended in accordance with the undertaking.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Minister of Marine and Fisheries to the Minister of Justice.

OTTAWA, 16th April, 1900.

MY DEAR SIR,—My attention has been called to the fact that the legislature of Nova Scotia, in the session of 1899, passed a Fisheries Act, one clause of which authorizes the licensing of fishing traps or weirs on any part of the coast of Nova Scotia.

Unless this Act has gone into operation I would like to consult with you, with the object of disallowing it, or calling the attention of the government of Nova Scotia to it, in order that it can be stricken out, as it is clearly not within their province to determine how, or in what manner, and at what times, fishing may be allowed. The Privy Council decision has set that at rest, if nothing else.

Yours, &c.,

L. H. DAVIES.

The Deputy Minister of Justice to the Minister of Marine and Fisheries.

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1900.

MY DEAR SIR LOUIS DAVIES,—Referring to your letter of the 16th instant, addressed to the Minister of Justice, I presume you refer to Chap. 4 of the Nova Scotia Acts, 1899, intituled "An Act respecting Foreshores and Beds of Rivers and Lakes."

We reported on the Nova Scotia Acts on 11th November last, but unfortunately I seem to have overlooked this chapter. How it was I scarcely know, although the title is misleading, because it refers not only to the leasing of fish-traps and weirs (see section 10), which is the provision to which I presume you refer, but also authorizes the Governor in Council to grant or lease the beds of foreshores and harbours. The time for disallowance does not, however, expire until 24th July next, and I am writing the Attorney General according to the usual practice in such cases.

Yours faithfully,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Deputy Minister of Justice to the Attorney General

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1900.

SIR,—In reporting in November last on the Nova Scotia statutes of 1899, the fact appears to have been overlooked that Chap. 4, entitled "An Act respecting Foreshores and Beds of Rivers and Lakes," deals not only with rivers and lakes, but also with harbours.

Section 1 authorizes the Governor in Council to issue grants or leases of any flats, beaches or foreshores in any harbour.

Section 2 provides that such grants, when issued, shall vest absolutely the fee simple of the land conveyed in the party receiving them, subject to any control vested in the parliament of Canada with respect to the navigation of any lands covered with water embraced in such grant.

Section 5 provides that applications for grants or leases of the beds of harbours shall be made in writing to the Attorney General.

Section 8 appropriates the money to be received from the granting of water lots, or the leasing of the beds of any harbours.

Section 9 prohibits any person to use or cultivate oysters upon any harbour without having obtained a lease of the lands so cultivated, under the provisions of this Act.

Section 10 enables the Governor in Council, upon application, to authorize the leasing of a fish-trap or fish-traps, a weir or weirs on any part of the coast of Nova Scotia.

I am directed to state that all these provisions appear to the Minister of Justice objectionable. The sections to which I have referred, other than section 10, seem to expressly authorize or impliedly sanction, the authority of the Lieutenant Governor in Council to grant or lease the beds of harbours, and appropriate the income arising from the disposal of such property, but inasmuch as these harbours have been held to belong to the Dominion and not to the provinces, the legislation in question can only be regarded as affecting the public property of Canada, and, therefore, *ultra vires*. Section 10, authorizing the leasing of fish-traps or weirs on any part of the coast, is, in the minister's opinion, so far as it intends to sanction the use of fish-traps or weirs, *ultra vires* as affecting the regulation of fisheries. The word "leasing," I suppose, is to be construed as licensing, and what the section seems really to intend is to enable the Lieutenant Governor in Council to authorize the use of traps, or weirs, on any place on the coast to be specified. This he certainly could not do except where consistent with Dominion legislation. As to leasing the bed of the sea within the three-mile limit, it is at least doubtful whether a provincial legislature has any authority. It seems to the minister at present, therefore, that this Act ought to be disallowed, unless it be amended so as to remove the objections to which I have referred.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Attorney General to the Minister of Justice.

HALIFAX, N.S., 25th April, 1900.

DEAR SIR,—I have the honour of acknowledging receipt of a communication from Mr. Newcombe, the Deputy Minister of Justice, dated the 18th inst., respecting an Act of the legislature of Nova Scotia, chapter 4, Acts of 1899, entitled, "An Act respecting Foreshores and Beds of Rivers and Lakes."

From his communication I am led to believe that in your view these are phases of the Act which are objectionable, and that authority is assumed by the provincial legislature which exceeds the powers conferred upon it by the British North America Act. I am going to submit considerations which induced me to believe that in framing the Act I kept strictly within the powers and prerogatives distinctly conferred upon provincial legislatures. As to whether in this regard I am right, or your views will ultimately be found to be the true ones, is a question, of course, which may be fairly open to debate and difference of opinion, and can only be adjusted by courts of the last resort, after the matter has been thoroughly threshed out in every aspect.

But the particular point I wish to call your attention to now is the inconvenience and undesirability of determining the matter at issue between us by any such drastic step as disallowance. This Act was passed more than a year ago and already many leases have been issued upon the faith of it, of oyster beds in the province. Large sums of money have been expended by the lessees in improving and developing the oyster culture of these beds, and valuable property rights have thus been acquired, all of which would be thrown into confusion and jeopardy by the disallowance of the Act. None of these leases exceeded the powers conferred upon us by the British North America Act, and yet these leases are issued under and by virtue of this particular Act of the legislature.

In regard to the leasing of what is strictly called fishing privileges, such as the leasing of lobster traps and weirs, I may state that by an arrangement between this department and the Minister of Marine and Fisheries, we are not seeking to exercise any such powers whatever. All lobster traps and weirs in Nova Scotia are still licensed by the Department of Marine and Fisheries. All lobster privileges are also disposed of under license from the Department of Marine and Fisheries, and we have not attempted to interfere, although the other provincial governments are disposed to interfere, with the absolute and unrestricted fishing privileges of the Dominion at large. We don't want control of the fisheries. We want the responsibility of regulating and protecting the fisheries to be vested in the Dominion authorities, as represented by the Department of Marine and Fisheries. All we want is the right to rent or lease our land, and that is all we are seeking by this legislation.

I am disposed to think that when the matter is reduced to its ultimate course of reasoning, and the highest judicial tribunals come to determine the point, it will be found that the rights of the province extend unquestionably to the exercise of ownership of lands covered with water surrounding the shores of all the provinces, while the control of navigation and of the fisheries surrounding these shores is vested in the Dominion.

I regard Holman and Green as a preposterous decision, and one which is partly disposed of by the latest decision of the Judicial Committee of the Privy Council, and when the matter comes to be threshed out more fully and definitely, the very last vestige of Holman and Green will be torn to shreds.

The Dominion authorities have supreme control over harbours in respect of navigation and in respect to the ownership of all improvements which go to make up the commercial phases of the harbour itself, but the land underneath the water of harbours is mostly unquestionably the property of the provincial government, and that will ultimately be found to be the inevitable conclusion which judicial authority will reach. The land belonging to the foreshores of the province generally is admittedly in the province. The Dominion legislature has gone so far as to pass an Act declaring it is

in the province. No serious contention has ever been made that it was not in the province. The only serious contention that has been made is that the beds of harbours are in the Dominion. I think it will hereafter puzzle the erudition of the judicial mind to determine the very nice question as to whether action of the winds and waves has got to be sufficiently fierce to vest the foreshore in the province, and it gets sufficiently mild and calm by protecting hills to become a harbour and vested in the Dominion. The real fact of the case is that the water, the navigation and the control and regulation of fisheries of the foreshores, are in the Dominion, but the *terra firma*, the land under this water is undoubtedly an extension of the property in the land, which the British North America Act vests in the provinces.

I was present and took part in the argument of the fisheries and foreshores case before the Judicial Committee of the Privy Council, and I was extremely careful when draughting the Act of 1899 to keep absolutely and strictly within what I conceived honestly to be a fair and judicial interpretation of provincial rights, and all I wish to say at the present moment is, that, if we cannot agree between us as to what our rights are, there is a method by which the points at issue between us can be justly and judicially determined, but it is not a proper case for the power of disallowance. This would be little less, in my judgment, in the present instance, than a disaster, an injustice, and bordering close upon an arbitrary act, and I must, therefore, strongly protest against the exercise of any such power. I do not see my way clear at present to recommend any substantial changes in the terms of the Act. I am willing, however, to submit every single question in that Act to judicial determination, and I will conform our legislation to the requirements of any competent judicial tribunal.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 21st May, 1900.

SIR,—Referring to your letter of the 25th ultimo, it was distinctly held by the Supreme Court of Canada in *Holman vs. Green*, that the property in public harbours, including the beds or soil thereof, is by the British North America Act, vested in the Dominion, and that the soil ungranted at the time of confederation between high and low water mark, and being within the limits of such harbours, also became by the express unqualified words of that enactment, vested in the Dominion as part and parcel of such harbours.

In the recent decision of the Judicial Committee of the Privy Council their Lordships said: "With regard to public harbours their Lordships entertain no doubt that whatever is properly comprised in this term became vested in the Dominion of Canada. The words of the enactment in the 3rd schedule are precise. It was contended, on behalf of the provinces that only those parts of what might ordinarily fall within the term 'harbour,' on which public works had been executed, became vested in the Dominion, and that no part of the bed of the sea did so. Their Lordships are unable to adopt this view. The Supreme Court, in arriving at the same conclusion, founded their opinion on a previous decision in the same court, in the case of *Holman vs. Green*, where it was held that the foreshore between high and low water mark on the margin of the harbour became the property of the Dominion as part of the harbour."

The only qualification of *Holman vs. Green* by the Judicial Committee is stated as follows:—"Their Lordships are of opinion that it does not follow that because the foreshore on the margin of a harbour is Crown property, it necessarily forms part of the harbour. It may or may not do so, according to circumstances. If,

for example, it had actually been used for harbour purposes, it would, no doubt form part of the harbour; but there are other cases in which, in their Lordship's opinion, it would be equally clear that it did not form part of it."

This qualification, however, is of no consequence so far as concerns the present statute respecting foreshores and beds of rivers and lakes, which professes to authorize the Lieutenant Governor in Council to issue grants of the foreshores and beds of harbours generally. It is true that in this Act the word "harbours" is not qualified by the word "public" as in the case of the British North America Act, but the minister apprehends that the word "harbours" as used in the Nova Scotia statute cannot be interpreted so as not to include public harbours, and, therefore, what this Act professes to do is to authorize the Lieutenant Governor of Nova Scotia in Council to grant the foreshores and beds of harbours which the British North America Act, as construed by both the Supreme Court of Canada and the Judicial Committee, has declared to be vested in the government of Canada.

The reference in the fisheries case, to which the provinces were parties, was made for the express purpose, among others, of determining the title to the beds of harbours, Nova Scotia and some of the other provinces having questioned the propriety of the decision in *Holman vs. Green*. The decision reached upon that point has distinctly excluded from the range of provincial legislation, the enactment of the provisions in question. There is no further Court of Appeal, and it is extremely unlikely that the Judicial Committee would upon further hearing modify its opinion as pronounced in the fisheries case. Therefore the minister sees no alternative but disallowance.

It does not, in the opinion of the minister, follow that if the Act be disallowed, grants or leases made in pursuance of such provisions thereof as are *intra vires* would therefore become inoperative. So far as the provincial government has dealt with the beds or foreshores of public harbours, the conveyances are of no avail as matters stand, and disallowance as to them would be harmless. The importance of the matter is that the legislature of Nova Scotia has enacted a statute authorizing the Lieutenant Governor to deal with the public property of Canada, and you do not see your way clear to recommend any substantial change in the terms of the Act. Under such circumstances the minister presumes that in the event of disallowance, the legislature would take any steps which might be necessary to confirm proceedings lawfully taken under other portions of the statute which were competent to the legislature, and those holding vested rights must, in the minister's opinion, look to the provincial authorities for such confirmatory provisions as may be necessary or expedient.

The section with regard to licensing fish-traps, &c., seems, in the view of the minister, to cover a good deal more than what was intended, as stated in your letter. If you merely intend to authorize the Governor in Council to grant leases of fisheries or fishing privileges belonging to the province, why not so express the matter plainly? It is the construction of the section according to its letter which, of course, would govern, and not the present intention of your government in administering it. The section is objectionable for two reasons, first, because it may be construed to authorize the Lieutenant Governor in Council to license the use of traps and weirs, fishing by means of which may have been lawfully prohibited by parliament, and, secondly, because it may be held to authorize the leasing of fishing stations upon the open coast within the three-mile limit. The latter objection is, no doubt, a debatable one, but it is, in the minister's opinion, the only objection stated to this Act which is open to serious doubt.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Attorney General to the Deputy Minister of Justice.

HALIFAX N.S., 26th May, 1900.

DEAR SIR,—I must confess that I have read your letter of the 21st inst., with very great surprise and very profound regret. That any minister should undertake to advise His Excellency the Governor General to disallow, for the mere reason of differing views on the subject of its constitutionality, an Act so important in its character and so vital in its operations as that now under consideration, seems to me unusual and open to question.

That the responsibility of any of the difficulties and complications of such a step shall not attach to the provincial government of Nova Scotia, I am going to propose concessions, which, while not commending themselves to my judgment as being imposed by the British North America Act, yet being of no immediate practical concern, had better be abandoned as far as the province is concerned, than to be subjected to the evils which might arise from disallowing an Act, on the faith of which some hundreds of people have invested money and are carrying on an important enterprise.

The concessions I propose are as follows:

1st. To repeal absolutely the clause relating to fish traps and weirs, about which we care nothing, and which we do not propose, under existing circumstances, to put into execution.

2nd. To define by special Act the word "harbours" and to declare that the Act is not intended to apply to public harbours or to harbours upon which improvements have been made. To leave out harbours altogether would be to abandon the Act because all our oyster beds are located in places which might very well be designated as harbours. Every arm of the sea is a harbour in the larger sense, and I am sure that the Judicial Committee of the Privy Council will never give any such interpretation to the words "public harbours" as found in the schedule of the British North America Act as to have them include every place of shelter along coasts.

It seems to me that, in undertaking to introduce and carry legislation in the direction indicated above, further action on the part of the federal authorities should be suspended.

Yours very truly,
J. W. LONGLEY.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 2nd June, 1900.

SIR,—I have the honour to acknowledge receipt of your letter of 26th ultimo.

I am directed to state that the Minister does not consider the remarks contained in the first paragraph of your letter can properly apply to the present situation. There was and perhaps still is difference of opinion as to what, independently of judicial interpretation, was intended by the expression "public harbours" as used in the third schedule of the British North America Act; but, while those holding views different from the ones which were contended for by the Dominion government, and ultimately upheld by the Judicial Committee, may not be satisfied with the propriety of the decision, yet the law must be administered subject to the interpretation of the courts, and it cannot, in the opinion of the minister, be seriously urged that the Judicial Committee has not clearly determined that public harbours, including the beds thereof, became, under the British North America Act, vested in the government of Canada. That being so, it seems to the minister the undoubted duty of this government to retain the administration of the property in its own hands, and, the courts already having pronounced upon the subject, there seems no remedy in the present case but repeal or disallowance.

As to the amendments which you propose, I am to state as follows:—

If these were proposed in the form hereinafter suggested as an undertaking by your executive council, the minister would submit to His Excellency in Council the propriety of allowing the Act to remain subject to such undertaking for its amendment. You propose to define by special Act the word "harbours," but the minister considers that it would be better not to undertake any such definition, as the question as to what is or is not a public harbour may be difficult to determine, and there would very likely be difference as to the scope of the definition. The amendment which your government should undertake to have enacted ought, in the minister's opinion, to be confined to the repeal of section 10 with regard to the licensing of fish-traps and weirs and the adding of a declaratory section to the effect that *the Act in question was not and is not intended, to have any application to public harbours within the meaning of that expression as used in the 3rd schedule of the British North America Act*. Such an amendment would, of course, leave the question quite open to the courts with regard to any particular harbour as to whether it is a public harbour or not. If a public harbour within the meaning of the British North America Act, it would be Dominion property and not within the application of the statute. Otherwise I presume the statute would operate. If your government is satisfied to give such an undertaking, will you be good enough to have a minute passed and a despatch sent forward through the usual channels, after which the minister will report to His Excellency. As the period for disallowance is drawing to a close, this matter will not permit of very much delay.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Attorney General to the Deputy Minister of Justice

HALIFAX, N.S., 11th June, 1900.

DEAR SIR,—In answer to yours of the 2nd instant, I have to say that, so far as I can interpret your letter, there will be no difficulty in obtaining an Order in Council agreeing to introduce further legislation in the direction suggested and it will be attended to at once. I send this letter in order that you may be quite easy on the matter.

Yours very truly,

J. W. LONGLEY.

The Deputy Minister of Justice to the Attorney General

DEPARTMENT OF JUSTICE, OTTAWA, 25th June, 1900.

SIR,—Referring to previous correspondence with respect to Ch. 4 of the Nova Scotia statutes, 1899, and particularly to your letter of 11th instant, I am informed at the state department that no despatch has yet been received undertaking to promote the amendments suggested in my letter of 2nd instant. Would you be good enough to see that this is done at once as the period within which His Excellency has jurisdiction is drawing to a close.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Attorney General to the Deputy Minister of Justice

HALIFAX, N.S., 26th June, 1900.

● DEAR SIR,—I beg to inclose certified copy of a minute of council adopted upon a report of mine in relation to proposed amendments to the Act respecting the leasing of foreshores and the beds of harbours, Ch. 4 of the Acts of 1899. This, I think, covers the suggestions made in your former communication to me.

Yours very truly,

J. W. LONGLEY.

Copy of an Order of the Executive Council of Nova Scotia, passed at Halifax on the 19th day of June, A.D. 1900, and approved by His Honour the Lieutenant Governor.

Upon reading the report of the Attorney General, dated 11th June, 1900, it is recommended that an Act be submitted to the legislature at the next ensuing session providing for the amendment of Ch. 4 of the Acts of 1899, as follows:—

1st. That section 10 of such Act be repealed.

2nd. That a clause be added declaring that the Act was not and is not intended to have any application to public harbours within the meaning of that expression as used in the third schedule of the British North America Act.

I hereby certify that the foregoing is a true copy.

E. C. FAIRBANKS,

*Clerk of Executive Council.**The Deputy Minister of Justice to the Attorney General*

DEPARTMENT OF JUSTICE, OTTAWA, 28th June, 1900.

SIR,—I have the honour to acknowledge receipt of your letter of 26th instant, inclosing certified copy of an order of the Executive Council of Nova Scotia with reference to the amendment of Ch. 4 of the Acts of 1899, which is quite satisfactory.

The minister will immediately make his report to Council upon the subject and a copy of the minute will be forwarded to you as soon as approved.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

*Deputy Minister of Justice.**Senator McDonald to the Minister of Justice*

OTTAWA, 5th March, 1900.

DEAR SIR,—I wrote you on the third instant calling your attention to chapter 84 of the Acts of 1899 for the province of Nova Scotia and the injury it inflicts upon those to whom it applies.

To-day I inclose you a copy of a petition to the local legislature of Nova Scotia from the same.

The inclosed resolution of the town council of Sydney is the only authority on record on which chapter 84 of the Acts of 1899 was founded 25th January, 1899.

The following resolution was moved by Councillor Greenwell, seconded by Councillor N. E. Muggah, and passed unanimously, viz:—

"Resolved, that the town council of Sydney does hereby call a public meeting of the ratepayers of the town of Sydney for the purpose of submitting to them a resolution authorizing the procuring of an Act to enable the town to borrow a sum not exceeding \$50,000 for the purpose of providing a free water supply and site for any manufacturing company which shall within two years from January, 1898, locate its works within the town limits, such company to expend not less than \$200,000 on such works and to employ not less than 250 men, and also to authorize a legislation permitting the exemption from taxation in perpetuity of such site and the plant erected thereon, and also all ships, barges, tugs and steamers used in connection with such enterprise, and also to procure all necessary legislation to enable the town to carry out the foregoing resolution."

The town meeting endorsed the above and thereupon application was made to the legislature which resulted in chapter 84, Acts 1899.

The following extract from the deed of the lands given by the town of Sydney to the Dominion Iron and Steel Company ("the said town of Sydney reserving the right to remove all buildings, structures and fixtures now on or upon the granted premises") shows the injustice of the legislation complained of. This practically confiscates to the town the buildings upon the lands expropriated. The town has lately sold the said buildings to the Dominion Iron and Steel Company for \$15,000.

In my own case I owned 20 acres of land with good buildings and fronting five chains on the waters of Sydney harbour at Muggah's creek, the buildings alone, including plumbing and heating apparatus, were valued by two competent builders and contractors at \$6,500.

Land in similar situations has been selling since for over one thousand dollars an acre.

It will be seen from the above that my houses have been reserved to the town and since sold to the Dominion Iron and Steel Company. Thus I am deprived of all my real estate in Sydney and my own buildings go to the town to pay the town debts—my own houses are used to pay me for the land which the town expropriated from me.

The amount awarded me was only \$3,450 and as yet not a dollar was tendered to me while my land and houses were forcibly taken possession of.

Surely the Act complained of should be amended if not disallowed.

I remain, dear sir, yours respectfully,

WILLIAM McDONALD.

COPY OF PETITION

To the Honourable the Lieutenant Governor, Legislative Council and Assembly of the Province of Nova Scotia:

The petition of the undersigned residents of the town of Sydney and late owners of lands expropriated for the Dominion Iron and Steel Company,

RESPECTFULLY SHOWETH:

1. That by an Act passed on the Thirtieth day of March, A.D. 1899 (Acts of Nova Scotia, 1899, chapter 84), the town of Sydney was authorized to expropriate certain lands, situate in the town of Sydney, to provide a site or location for the works of the Dominion Iron and Steel Company.

2. Under such authority a large number of lots of land were expropriated and handed over to said Steel Company.

3. The Act above cited provided that the values of the expropriated lands should be fixed by a board of arbitrators, whose findings should be final and conclusive, and the amounts when so fixed should be paid by the town of Sydney.

4. A large number of persons, whose lands have been expropriated, complain that the amounts awarded to them were exceedingly unjust and unfair and far below the actual cash value of such lands, and also far below the actual selling price of lands similarly situate within the town of Sydney.

5. In many instances—including a number of your petitioners—the lands expropriated were occupied for purposes of residence, and houses, barns and buildings had been erected thereon, and such owners, being ousted from their homesteads, were compelled to purchase other lands and erect new buildings.

As soon as it was definitely settled that the works of the said Iron and Steel Company were to be placed in Sydney, and long previous to the time when said awards were made, the price of lands within the town and in the vicinity had risen more than one hundred per cent; and, as the result of such rise in values, the parties whose residences had been expropriated were utterly unable, with the amounts awarded to them, to re-establish themselves in similar circumstances and convenience; and the loss and damage sustained in these cases was very serious.

That a large body of the citizens and taxpayers of the town of Sydney recognize the injustice that has been inflicted upon the complainants and are anxious that all just causes of complaint should be removed.

The town of Sydney, since the expropriation and since the making of said awards, has received from the Dominion Iron and Steel Company the sum of fifteen thousand dollars in compensation, it is alleged, for the buildings remaining on the expropriated lands.

On the 13th day of November, 1899, the town council of Sydney passed the following resolution:

“Whereas, the Town Council learns that it is claimed there are a number of the awards made by the Appraisers, under chapter 84 of the Acts of Nova Scotia, 1899, which on their face seem inequitable;

“And Whereas, it was always the desire of the Town Council and the ratepayers of Sydney to see that justice be done to all persons whose lands were expropriated, and should be fairly and liberally compensated therefor;

“And Whereas, it is desirable, in the town's best interest, that due inquiry should be made as to such inequitable awards, to the end that if such substantial injustice has been done, the same should, if possible, be removed;

“Therefore Resolved, that this council would respectfully ask the Lieutenant Governor, under the provisions of chapter 120 of the Revised Statutes of Nova Scotia, to be pleased to appoint this council a commission, to which shall be intrusted the duty of inquiring into and reporting upon the said awards, in order that, if the necessities of the case require, the necessary legislative action may be taken.”

Your petitioners beg to state the following facts as examples of the grievances complained of:

1. The owner of sixteen acres of land, with five dwelling houses and other buildings, was awarded the sum of \$2,400.

2. The owner of 57 acres of land, without buildings, was awarded \$7 per acre; whereas, at the time of such award nor since, could one acre of land be purchased within the limits of the town of Sydney for twenty times the amount of above valuation.

3. The owner of two acres of land, with dwelling house erected at a cost of \$800, was awarded \$650.

4. The owner of 16½ acres, with dwelling house, stable and outhouses, received \$2,500. Two and one-half acres of above land were cultivated, with garden and orchard, balance was leased for a long time previously for pasturage at a rental of \$110 per year.

5. The owner of two acres, with a good house thereon, was only able, with the amount awarded, to purchase a small lot in a similar locality—40 x 100 feet—and erect a small house. As a result of the expropriation and award, this owner was reduced from the ownership of two acres to a lot 40 x 100. Actual loss being the price of present lot multiplied by 22.

The owner of 45 acres of improved farm land, with water frontage, and having dwelling house, barns and outhouses, was awarded \$4,500.

In a large number of cases the entire homestead and real estate of the complainants was expropriated, and consequently were not beneficially affected by the rise in value of real estate outside the expropriated districts.

Your petitioners therefore pray that such legislation may be made in the premises as will enable the parties aggrieved to have an investigation of their claims before a competent tribunal, and such further enactments as may be necessary for the carrying out and satisfaction of any findings in their favour.

Dated at Sydney, February 20, 1900.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 7th March, 1900.

SIR,—I am directed to inclose herewith copy of a letter, dated 5th instant which the Minister of Justice has received from the Hon. Wm. McDonald, also copy of a petition addressed to the Lieutenant Governor and legislative council and assembly of the province of Nova Scotia, which accompanied Mr. McDonald's letter, and which has been submitted to the Minister of Justice, as I understand, as a statement of facts upon which Mr. McDonald relies in addition to those set forth in his letter.

You will observe that Mr. McDonald seeks disallowance of the Act unless suitable amendments are made.

Mr. McDonald complains that the Act is unjust in principle, and that the awards made under it have been, in his own case and others, manifestly inadequate, yet there is no appeal or method provided by the Act for reviewing the awards.

Before considering the propriety of disallowance upon the ground urged by Mr. McDonald, the minister would be glad to have your observations upon the matter, and he would be glad to know whether it is proposed to amend the statute at the present sitting of the legislature so as to provide for appeal, or for further consideration of the award.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

PETITION of the citizens of Sydney in the County of Cape Breton and Province of Nova Scotia to the Honourable the Minister of Justice of Canada.

To the Honourable Her Majesty's Attorney General and Minister of Justice, Department of Justice, Ottawa, Canada:

The petition of the citizens of Sydney in the county of Cape Breton and province of Nova Scotia, respectfully sheweth:

That by Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, the town council of Sydney aforesaid was authorized and empowered to expropriate and take the lands, and lands covered with water, belonging to certain of your petitioners at and near Sydney aforesaid, for the alleged purpose of providing a free site for a company to smelt and manufacture thereon iron and steel;

That the town council of Sydney, under said Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, did expropriate and take lands belonging to certain of your petitioners without making due or adequate recompense therefor, and did, for the alleged purpose of providing a site for an iron and steel manufacturing company, take and expropriate more and greater areas of lands than were necessary for the purposes of any such company; and also, under pretext of taking and expropriating lands and lands covered with water as authorized by said Act, did take and expropriate lands covered with tidal and navigable waters at Sydney aforesaid for the alleged purposes of said company; and did take, expropriate and transfer to the Dominion Iron and Steel Company, Limited, tidal and navigable waters and lands covered by such waters at Muggah's Creek, at Sydney aforesaid, and said town council did so, recklessly, unnecessarily, and improvidently;

That in the opinion of your petitioners the tribunal created by said Chap. 84 of the Acts of Nova Scotia for 1899, to appraise the compensation to be paid the owners of lands and lands covered with water taken and expropriated as aforesaid was insufficient and inadequate, being merely three appraisers not under oath; and there being no appeal whatsoever provided from the said tribunal, the method of determining the compensation aforesaid was ill-advised and inexpedient, and contrary to your petitioners' ideas of British justice and fair-play.

That already hardships, wrong and gross injustice have resulted to a considerable number of the citizens of Sydney from the operation of the said Act, which can only be remedied by the repeal, or the disallowance, or the radical alteration and amendment of said Act;

That your petitioners earnestly desire and request and humbly implore that the Honourable Her Majesty's Attorney General and Minister of Justice aforesaid shall forthwith advise His Excellency the Governor General of Canada to disallow the said Act, namely: the said Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, on the ground that the said Act is, at least in part, unconstitutional and invalid, being *ultra vires* and beyond the jurisdiction of any provincial legislature in Canada; and also that the said Act is contrary to equity and natural law, being of an arbitrary and unjust character, and calculated to work wrong and injustice if permitted to remain in force.

And your petitioners, as in duty bound, will ever pray.

HUGH McDONALD, Contractor.

FRANK D. McDONALD.

ANGUS J. MACLEOD.

B. McLEOD.

ALMON ANDREWS.

J. W. McDIARMAID, Hotel Prop.

J. McFADDEN.

H. TOWNSEND, J.P.

PHILIP BAGNETT.

C. H. HARRINGTON, Merchant.

HUGH McKENNA.

HECTOR MORRISON.

LAUHLIN Mc. QUARRIE.

J. A. MACLEAN, Merchant.

RICHARD ANDREWS.

March 12, 1900.

Senator Macdonald to the Minister of Justice.

THE SENATE, OTTAWA, 26th March, 1900.

MY DEAR SIR,—The inclosed letter respecting Chap. 84 of the Acts of the Nova Scotia legislature for 1899, I have just received and I send it for your perusal.

The amendments which the government of Nova Scotia propose to make to Chap. 84 are not at all satisfactory to the parties complaining. The amendments simply propose to enable the town of Sydney to divide \$15,000 which they received for buildings on the expropriated lands among the owners of lands expropriated.

The honest owners of these buildings could have sold their houses to the Dominion Iron and Steel Company themselves and to better advantage. The Dominion Iron and Steel Company want all these buildings and would, I have no doubt, pay about the value for them.

The whole Act should be disallowed.

I remain, faithfully yours,

WM. McDONALD.

Mr. A. G. MacEchen to Senator Macdonald.

SYDNEY, CAPE BRETON, N.S., 15th March, 1900.

DEAR SIR,—I take the liberty of directing your attention to the necessity that exists for interference by the Hon. Minister of Justice, as regards Chap. 84 of the Acts of the province of Nova Scotia for 1899. The Act I refer to is that under which the town of Sydney, for the alleged purposes of the Dominion Iron and Steel Company, expropriated not only some hundreds of acres of land, but also a considerable portion of navigable waters of Sydney Harbour and the lands covered with such waters. You will remember that the town of Sydney is situate on a peninsula, one side of it bounded by the lower part or mouth of Sydney river, or Spanish river, as it is called on old maps, and on the other side by a navigable channel of salt water, nowadays generally called Muggah's creek, but which on the old map is known under other names, among them "Vessel's cove" and "Wintering cove" and "Maloney's Winter Harbour." These names indicate that at the earliest period of settlement here, this bay or creek was not only navigable as it still is, but was used for laying up vessels for winter. And you have doubtless observed yourself as well as I have, that in our own day various crafts and vessels have passed the winter in that bay or creek. Of course you understand that the cove, bay or harbour to which I am referring is that which is locally known of late years by the name of Muggah's creek, on account of the number of families of the name of Muggah who have been living about the shores of this beautiful inlet. Now, I have directed the attention of a number of the lawyers here to the question of the validity and wisdom of our local legislature's action last year, by which the navigable waters of this bay were expropriated by the town of Sydney and handed over by the town to the Iron and Steel Company, who make no secret of their intentions to fill it up with slag and other waste matter from their works, without regard to the rights of the people or the Crown, in and to that bay, as navigable waters and as part of a harbour which has proved very useful at various times to ship-owners and to the public generally, and all our lawyers whose opinions are worth having think that the local legislature has exceeded its jurisdiction. If, as I am told, moreover, that the old "Wintering cove" is claimed by the British Admiralty for naval purposes, and that there is on file in the Admiralty's office in London an old royal decree, reserving that cove, as well as "Fresh Water creek," for Admiralty purposes, what would be thought of our Governor General in Council and the Hon. the Minister of Justice for Canada, who allowed a stupid local legislature to legislate in such a manner as to have the waters in question converted into dry land? I write to direct your attention particularly to this, first, because you are one of the senators representing this province in the Upper House, and ought to have sufficient interest in the legislation of the country to try to have this blunder corrected before it is too late; secondly, because you have the honour of having sat in the same legislative chamber as the Hon. Mr. Mills, whom I know to be a learned constitutional lawyer, and whom I believe to be anxious to keep up the respectability of both Dominion and provincial legislation. I can't but believe that if you direct the attention of the Hon. the Minister of Justice to the point to which I have adverted above, he will see the necessity of disallowing the whole Act. I am well aware that there are other aspects

of this Chap. 84 of the Acts of the province of Nova Scotia for the year 1899, which are simply disgraceful to any British legislature, especially in the closing days of the 19th century; but I remember that you very thoroughly exposed those other aspects yourself, in conversations with some members of the local legislature last summer, and therefore I need not dwell on those. However, I do not remember, that you emphasized the point referred to, to such an extent as I think you might fairly have done. I can't find any lawyer in this part of the country with any pretense to a knowledge of constitutional law, who will say that the legislation complained of was either wise or expedient or in any sense justifiable. Pardon me if I insist upon you directing the attention of the Minister of Justice to the various aspects of this legislation, including the one upon which I wish to lay special stress as above intimated.

Yours very truly,

A. J. G. MAC-EGHEN.

The Attorney General to the Minister of Justice.

HALIFAX, N.S., 16th March, 1900.

DEAR SIR,—I received through the hands of Mr. Newcombe a copy of a memorial addressed to your department by the Hon. Senator McDonald, asking for the disallowance of chapter 84 of the Acts of 1899 of this province, and he intimated that your department would be glad to have any observations that I have to make on the subject.

I have to say that, in my judgment, the Act is one which is exclusively and undoubtedly within the jurisdiction of the legislature of Nova Scotia. The Act on the face of it seems to me to be a perfectly fair and proper one. It provides for the expropriation of land for a great public purpose, and it provides a system of arbitration to determine values. If any injustice should occur under such a system of arbitration, it occurs to me that the legislature of Nova Scotia can be looked to as the natural and proper channel for obtaining redress of such grievances. If every time that an individual finds himself affected in any way by an Act of the provincial legislature, it would become intolerable if he was to have this legislation disallowed by the Governor General. Such a system of government could not be practically worked out in any country, and it has not been attempted to be worked out in Canada so far as my experience goes.

I may mention incidentally, although I do not know that this bears in any way upon the subject-matter of Senator McDonald's communication, that the town has applied to the legislature at this session for power to devote \$15,000 more to supply any deficiencies which the arbitration may have made in its awards. This \$15,000 was received from the Dominion Steel and Iron Company as compensation for buildings on the land taken, and this money is not to be appropriated to the use of the town but is to be distributed upon a basis provided for in the Act, perfectly fair and equitable, among those who deserve larger sums than were originally awarded.

I think that this last incident takes away any pretense of consideration of the application that this legislation should be disallowed.

Yours very truly,

J. W. LONGLEY.

The Attorney General to the Deputy Minister of Justice.

HALIFAX, N.S., 26th March, 1900.

DEAR SIR,—I beg to acknowledge receipt of petitions from certain inhabitants of the town of Sydney in regard to chapter 84 of the provincial Acts of Nova Scotia,

1899. All that I said in respect to the petition of Senator McDonald applies to this petition. The Act is within the legislative competency of the legislature of Nova Scotia, is in itself proper and equitable, and if deficient in any way can be best remedied by an Act of the legislature of this province. An Act dealing with that subject has already, as I am advised, passed both Houses of the Nova Scotia legislature.

Yours very truly,
J. W. LONGLEY.

The Minister of Justice to Senator McDonald

DEPARTMENT OF JUSTICE, OTTAWA, 28th March, 1900.

DEAR SENATOR McDONALD,—Referring to your letter of the 26th instant, inclosing a letter of 15th, addressed to you by Mr. A. J. G. MacEchen, I may say that I caused to be referred to the Attorney General of Nova Scotia a copy of your letter of the 5th instant and of the petition which accompanied the same, representing that the Act was complained of as unjust in principle and that the awards made under it were claimed to be, both in your case and in others, manifestly inadequate, yet that no appeal or method had been provided by the Act for reviewing the awards, and the Attorney General was asked for his observations upon the matter, and whether it was proposed to amend the statute at the present sitting of the legislature so as to provide for appeal or further consideration of the awards.

I have received a reply from the Attorney General, in which he says that the Act is perfectly fair and proper; that it is entirely within the legislative authority of the province, and that if it gives rise to any grievance, application for redress ought to be made to the provincial legislature, and not to this executive. The Attorney General mentions, however, that the town of Sydney has applied to the legislature for power to devote \$15,000 towards making up any deficiency there may be in the awards. He states that this sum was received from the Dominion Steel and Iron Company as compensation for buildings on the land taken; that this money is not to be appropriated to the use of the town, but is to be distributed upon a basis provided in the Act, perfectly fair and equitable, among those who deserved greater sums than were originally awarded, and the Attorney General adds that he considers this last incident takes away any pretense for consideration of disallowance.

In these circumstances, I do not feel justified in recommending that the Act be disallowed. It is unquestionably *intra vires* and as the provincial legislature has considered the measure an expedient one, it ought not, I think, upon any sound principle to be reviewed on the merits by the Governor in Council. I am in hopes, however, that the application of the \$15,000, to which the Attorney General refers, will in a large degree remove the grievance which is now complained of.

With regard to the question of navigation, which Mr. MacEchen mentions, the Act in itself does not authorize any interference with navigation, or the expropriation of any property belonging to Her Majesty in the right of Her Imperial government, or in the right of Her government of Canada. If, as Mr. MacEchen contends, the waters in question constitute a public harbour, the title, unless granted away before confederation, would be in the Dominion, and this provincial statute could not give or authorize compulsory acquisition of any title to it. If the company propose to fill up or construct any works in the harbour they would first have to obtain the approval of the Governor in Council, under chapter 92 of the Revised Statutes of Canada. There are thus ample means of protecting the public interest in the case of any unauthorized dealing with public property or navigation. In fact the company has no more right to do the things which Mr. MacEchen anticipates than they would have had if the Act complained of had not been passed.

Yours very truly,
DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to Mr. Allan J. Macdonald

DEPARTMENT OF JUSTICE, OTTAWA, 31st March, 1900.

SIR,—Referring to your letter of the 12th instant, inclosing a petition from citizens of the town of Sydney, seeking the disallowance of Ch. 84 of the Acts of Nova Scotia of 1899, I am directed to inform you that, as is usual in such cases, I have referred to the Attorney General of the province, a copy of the petition for his observation and for the purpose of ascertaining whether the local legislature, in view of the complaints, propose to make any amendment of the statute. The Attorney General states in reply that the Act is perfectly fair and proper, and that if it gives rise to any grievance, application ought to be made to the provincial legislature and not to the Dominion executive. The Attorney General mentions, however, that the town of Sydney has applied to the legislature for power to devote \$15,000 towards making up any deficiencies there may be in the awards. He states that this sum was received from the Dominion Steel and Iron Company as compensation for buildings on the land taken, and this money is not to be appropriated for the use of the town, but is to be distributed upon a basis provided for by the Act, perfectly fair and equitable, among those who deserved greater sums than were originally awarded. The Attorney General adds that he considers this last incident takes away any pretense of consideration for disallowance. I understand that the amending Act to which Mr. Longley refers has already passed both Houses of the legislature.

The minister entertains no doubt as to the validity of the Act.

In these circumstances I am to inform you that the minister does not feel justified in recommending disallowance. Questions sometimes arise as to legislative authority, and sometimes provincial Acts conflict with Dominion policy. In such cases, and perhaps in some others, the power of disallowance is sometimes exercised, but the Dominion government does not undertake to judge of the propriety or expediency of provincial statutes competently enacted and consistent with the principles of legislation, where no Dominion interest is affected. I am to state, however, that the minister is in hopes that the application of the \$15,000, to which the Attorney General refers, will in a large measure remove the grievance complained of.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

63rd VICTORIA, 1900

3RD SESSION—32ND GENERAL ASSEMBLY

(Approved 19 February, 1901)

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Nova Scotia passed in the sixty-third year of Her late Majesty's reign (1900), and received by the Secretary of State for Canada on 10th January, and he is of opinion that these statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia for the information of his government.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

1 EDWARD VII, 1901

4TH SESSION, 32ND GENERAL ASSEMBLY

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, December 31st, 1901.

These statutes were received by the Secretary of State for Canada on July 8th last. They may be left to their operation without comment.

Humbly submitted,

DAVID MILLS,

*Minister of Justice.***2 EDWARD VII, 1902**

1ST SESSION, 33RD GENERAL ASSEMBLY

(Approved 12 December, 1902)

DEPARTMENT OF JUSTICE, November 24th, 1902.

These Acts were received by the Secretary of State for Canada on 11th August last. They may be left to their operation without comment, except chapter 144, "An Act to incorporate the Maritime-Newfoundland Shipping Company, Limited."

The name of this company suggests the object of a shipping business with Newfoundland. Among the powers which the Act professes to confer on the company are included powers to build and purchase vessels, and to sell, operate and maintain vessels for the carriage or conveyance of passengers, goods, chattels, wares and merchandise; also to tow and otherwise move or assist vessels in distress or otherwise.

It will be observed that the power to carry out these objects is not expressly limited to Nova Scotia, and the undersigned considers, for reasons which have been already stated in this report with regard to an Ontario statute (see ante p. 60), and for reasons which have been frequently stated by the predecessors in office of the undersigned, that it is desirable to have this Act amended so as to confine the business of the company to the province of Nova Scotia, the Legislature having no jurisdiction to incorporate except for provincial objects.

The undersigned entertains no doubt that the Act as it stands would be construed subject to the limitation referred to, but as the terms used are general, he considers that it would be expedient to have an express limitation, and with that object he commends the statute to the further consideration of the Provincial Legislature.

C. FITZPATRICK,

*Minister of Justice.***3 EDWARD VII, 1903**

2ND SESSION, 33RD GENERAL ASSEMBLY.

(Approved 23 March, 1904)

DEPARTMENT OF JUSTICE, JANUARY 8th, 1904.

Chapter 174, intituled, "An Act to incorporate the city of Sydney," contains a provision, section 99, whereby all property vested in His Majesty for Imperial or

Dominion purposes is exempted from taxation, but it is provided that if such property is occupied by any person otherwise than in an official capacity, the occupant shall be assessed and rated in respect thereto, and that the exemption shall not extend to any water rates, nor any special or extra water rate, levied under the authority of the Act, nor to any rate or special assessment for sewers, sidewalks, or for local improvements. The Act, therefore, seems to intend that for certain purposes the local authorities shall be entitled to assess the property of His Majesty in His Imperial right, or in right of the Dominion. Such a provision is manifestly *ultra vires*.

The question as to the validity of the provision that an occupant may be assessed in respect of his occupation may be allowed to stand for such determination as the courts deem right, but the further proviso subjecting Imperial or Dominion property to taxation for special rates is manifestly *ultra vires*, and ought to be repealed. It would, of course, be very inconvenient to disallow the whole Act on account of this one objection, and the undersigned recommends, therefore, that the attention of the Government of Nova Scotia be called to the matter, so that at the present session of the Legislature they may repeal the proviso.

C. FITZPATRICK,
Minister of Justice.

The Attorney General of Nova Scotia to the Minister of Justice.

HALIFAX, April 5th, 1904.

SIR,—I have just had submitted to me your report together with the report of the Committee of the Privy Council in relation to the Acts passed during the year of 1903, by the Legislature of Nova Scotia.

I note that the only Act to which objection is made, is that in respect of the incorporation of the City of Sydney.

I recognize that under the British North America Act the property of the Dominion is not subject to taxation by the province, and in so far as Sydney's charter violates that provision of the Act, I have no difficulty in recommending that such portion be repealed. The assessment of private occupants of Government property is one which may or may not contravene section 125 of the British North America Act. So far as the City of Halifax is concerned, I think an arrangement has been entered into between the Provincial Government and the City of Halifax that the offices occupied in the Government building by the Canada Pacific Telegraph and the Bermudas Cable Company shall contribute taxes at the usual rates to the city. It seems an equitable provision, otherwise, if any government building were occupied by private persons carrying on business, they would be placed at an unfair advantage over all competitors who paid taxes.

It will be recognized, I hope, by the Department of Justice, that it is difficult, if not impossible, for me, acting on behalf of the Government, to definitely speak for the Legislature in respect of an Act local in its character. I will say, however, that the Government will be prepared to use its influence and its best offices in securing such a modification of the objectionable clause as will render it not obnoxious to the provisions of the British North America Act.

I have, &c..

J. W. LONGLEY,
Attorney General.

The Deputy Minister of Justice to the Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, April 15th, 1904.

SIR,—I am directed to acknowledge receipt of your letter of the 5th instant with regard to chapter 174 of the Nova Scotia Act, 1903, intituled "An Act to incorporate the City of Sydney," and I am to say that in view of your assurance that your Government will promote legislation at the next session to remove the objection affecting the taxation of Dominion property, the Minister will not recommend disallowance of the Act.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

4 EDWARD VII, 1904

HALIFAX, N.S., April 23rd, 1904.

The Honourable Charles Fitzpatrick, K.C., P.C., Minister of Justice, Ottawa.

SIR,—At the last session of our local legislature an Act was passed, intituled "An Act to amend Chapter 51, of the Acts of 1900, intituled An Act Relating to the City of Halifax," and as a resident and large ratepayer of the City of Halifax, I now address you in order to call your attention to the Act in question.

This Act, I have good reason for believing, was prepared, promoted and passed simply to enable certain present aldermen of the city of Halifax, who have not the required qualification to comply with the provisions of the Act of 1900 (Chapter 51, Section 12) to retain their seats and also to enable them to qualify for re-election.

The Bill was introduced in the legislative council and read a first time on the 25th February last, and subsequently passed through both houses of the local legislature, and was assented to in due course by the lieutenant governor.

You will notice that the Act deals with and relates to the city of Halifax and Number Eighty-two (82) of the Standing Orders of the Legislative Council of the Province of Nova Scotia is as follows:—

"All applications for Private or Local Bills, properly the subject of legislation by the Parliament of Nova Scotia, within the purview of the British North America Act, 1867, whether for the erection of a bridge, the making of a railroad, telegraph or telephone line, the establishment of a steamship line, or other like work, the granting the right of ferry, the construction of works for supplying or manufacturing gas, water or electricity, the incorporation of any particular profession, calling or trade, or of any joint stock company, the levying of any local assessment, the division of any county for purposes other than that of representation in parliament, or of any district, township or municipality, the removal of the site of any county, municipality, town or local offices, the regulation of any common or of dyked and marsh lands, or relating to any other local matter, including Bills relating to any city or incorporated town, or for granting to any individual or individuals any exclusive or peculiar rights or privileges whatever, or for doing any matter or thing which, in its operation, would affect the rights or property of other parties, or relate to any particular class of the community, or for making any amendment of a like nature to any former Act, shall require a notice, clearly and distinctly stating the nature and object of the application and (except in the case of existing corporations) signed by or on behalf of the applicants, to be published as follows:—viz., a notice inserted in the *Royal Gazette*, and in one newspaper

in the county, city or town affected, or, if there be no newspaper published therein, then in a paper in the nearest county, city or town in which a newspaper is published.

"Provided, however, that all Bills of a local nature may be read at a meeting of the Municipal Council of the county or municipality to which said Bill may relate, instead of inserting the notice hereinbefore required to be inserted in the *Royal Gazette* and newspapers, and in case of said Bill being read before said municipal council, it shall be made to appear by a certified copy of such Bill by the clerk of the municipality that the same was read in open council.

"Such notices to be continued in each case for a period of one month by weekly insertions during the interval of time between the close of the next preceding session and the consideration of the Bill: and copies of the newspapers containing the first and last insertion of such notice shall be sent to the Clerk of this House by the parties inserting such notice.

"(1) Any person seeking to obtain a private bill shall, whether it is originated in this House or not, immediately after the first reading thereof, and before its consideration by the committee to which it is referred, pay the expenses of printing one hundred copies thereof."

Now no notice of the introduction of the Bill was given in accordance with the provisions of above-mentioned Standing Order, in fact no notice whatever was given, and neither the mayor, city clerk nor any of the civic officials received any notice of its introduction and they did not know of its existence until after the same had become law.

I may state that section 12 of the Act of 1900 (Chap. 51) which is amended by the Act in question, was settled and passed after the fullest investigation and discussion before the Private Bills Committees in both Houses of the legislature by the representatives of the city and the citizens at large.

I am quite within the facts when I state that the mayor, the civic representatives (outside of the two or three personally interested) and especially the citizens of the city of Halifax, who have any stake in the community and have the city's welfare at heart, denounce the whole proceedings.

I merely write to call your attention to the Act, and, will, if you deem it necessary, prepare and forward a formal remonstrance against the allowance of the Act in question.

I have the honour to be,

Your obedient servant,

R. L. HART.

TORONTO, May 17th, 1904.

E. L. Newcombe, Esq., K.C.,
Deputy Minister of Justice,
Ottawa.

DEAR SIR,—Pursuant to the conversation I had with you on Monday, I beg leave on behalf of the Canadian Birkbeck Investment and Savings Company, to bring to the notice of the Department of Justice certain provisions of an Act relating to Loan Companies, passed on the 3rd day of March last by the Legislature of Nova Scotia, which we believe will be found to be illegal and unconstitutional, and on public ground, objectionable as impairing and tending to render non-enforceable existing contracts. A copy of the Act in question is annexed hereto. The particular portion we desire

to bring within the consideration of the department is the 8th section thereof, which enacts as follows:—

“In any action in which any interest or any fine or penalty in respect to arrears of principal or interest at a rate exceeding seven per centum per annum is claimed upon any written instrument, such written instrument shall not be deemed to be evidence of the contract between the parties, but the burden shall be on the party claiming under such instrument of proving that the same truly sets forth the terms of said contract entered into, and that the said terms were fully explained to the party agreeing to pay such interest, fine or penalty.”

The Canadian Birkbeck Company, a loan corporation, created by and deriving its powers from the parliament of Canada, has during a period of nearly ten years transacted business in Nova Scotia and acquired mortgage investments in that province amounting, approximately, to \$400,000. Under the provisions of the enactment above quoted the mortgages taken by the company as security for the moneys loaned in Nova Scotia are non-enforceable, and non-admissible, *per se*, as evidence of the contract. By what other means the contracts are to be evidenced is left unstated. But the obvious effect of the section is to impair, and in part invalidate, the entire body of the company's existing contracts within that province, and to enable any borrower who may be disposed to set up the contention that he had not rightly understood the contract to repudiate at will, and in part at least, a legal obligation. This enactment, which it will be seen is retroactive in its character, constitutes, it is submitted, a serious assault on existing contracts and lawfully acquired interests. It cannot, we think, be necessary to point out what fruitful opportunities it affords for vexatious litigation.

We are of opinion that the section of the Act above quoted constitutes legislation upon a subject coming within the exclusive legislative authority of the parliament of Canada, and that the enactment of such provisions is beyond the competence of a provincial legislature. Apart from the question of legality involved, which we are content to submit to the department without argument, we venture respectfully to ask that the advisers of His Excellency will furthermore consider whether retroactive enactments of this character are in accord with the general spirit and practice of the British legislation, and whether on grounds of public policy they can be regarded as unobjectionable as overriding existing contracts and injuring if not imperilling lawfully-acquired and long-established interests.

It seems to us that if legislation of this character is held to be constitutional and within the competence of provincial legislatures, consequences of no little gravity and moment follow. The position in which the bank and land mortgage interests of the Dominion will admit of being placed is, we venture to think, an unenviable one. We do not think it can be deemed unreasonable to infer that the extent to which any contract for the recovery of interest in respect of moneys loaned can be enforced will, in that eventuality, be dependent on and determined by such provisions as the legislatures may from time to time see fit to adopt with respect to what shall be deemed to be evidence of the contract—and not alone of the contract, but, as in the instance under consideration, of understanding of the contract. Neither does it seem to us unreasonable to conclude that if the Legislature of Nova Scotia can by such retroactive enactments negative and in effect nullify contracts of interest in excess of seven per centum, the legislatures of other provinces may with equal propriety pass similar enactments, and of such a kind, if they so choose, as to make it difficult and perhaps impossible to recover on this class of contracts any interest beyond five per centum or four per centum per annum, or such other rate as they think proper to designate.

For these and other reasons we have felt ourselves obliged to bring the 8th section of this Act to your notice, and through you to the attention of the honourable the Minister of Justice, in the hope that the minister will upon consideration deem it to be proper to recommend to the Governor General in Council that His Excellency's assent to this section be withheld.

I may add that this Bill was introduced in the closing hours of the session of the legislature. It was put through both Houses, we are informed, in less than three days, and not even printed until the last stages. The resident solicitors of the company had been assured that no Bill would be presented at the last session, and these assurances continued to be given until within 48 hours of the introduction of the measure. Even then they were unable to obtain a copy of it or learn its provisions. Those responsible for its introduction, we are further informed, would listen to no requests for its delay. Our representatives were in consequence deprived of any opportunity of securing such amendment or modification of the Act as would have protected our interests in the premises.

I am, dear sir,

Yours faithfully,

F. W. G. FITZGERALD.

DEPARTMENT OF JUSTICE, OTTAWA, May 25th, 1904.

The Honourable,

J. W. LONGLEY, K.C., M.P.P.,
Attorney General,
Halifax, N.S.

SIR,—I am directed to call your attention to an Act passed at the last sittings of the Nova Scotia Legislature intituled "An Act relating to Loan Corporations."

I inclose herewith for your observation copy of a letter which I have received from Mr. Fitzgerald of Toronto, the manager of the Canadian Birkbeck Investment and Savings Company.

In addition to what Mr. Fitzgerald states the minister would like to know upon what grounds you justify section 8 as within the jurisdiction of the legislature, the subject of interest having been assigned to the exclusive control of parliament. The effect of section 8 is certainly indirectly, if not directly, to prohibit the taking of interest by any written instrument in excess of 7 per cent, and no doubt this object might be accomplished by parliament. It seems to me, however, as at present advised that the legislation complained of is inconsistent with the Dominion Acts, and *ultra vires* of the province.

Awaiting your reply,

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

HALIFAX, September 27th, 1904.

HON. CHARLES FITZPATRICK,
Minister of Justice,
Ottawa.

SIR,—Referring to the application made by Mr. Fitzgerald, of Toronto, manager of the Canadian Birkbeck Investment and Savings Company to section 8 of chapter 4 of the Acts of 1903-4, and to the desire expressed by you that I should make any observations upholding the validity of said section, I beg to offer the following observations:—

Section 8 of chapter 4 does not in any way undertake or profess to regulate the rate of interest that either persons or corporations may legally charge. The only thing that the section purposes to do is to regulate contracts made between these corporations and individuals, which the provision of the British North America Act

assigns to the exclusive jurisdiction of the provincial legislature in the matter of "Property and Civil Rights."

It was brought to the attention of the legislature that agents of these corporations would induce parties in the country not familiar with commercial transactions to sign agreements respecting loans, which permitted the company to charge excessive rates of interest. We have no power to prevent the collections of excessive rates of interest, but we have the power to say that the written contract shall not be conclusive evidence of the contract, but that the party relying upon this document to secure this excessive rate of interest must independently show that this contract represents the full transaction between the parties. And it also opens the door for the defendant to give evidence relating to the circumstances under which the contract was made.

I am not undertaking at the present moment to say whether or not such legislation is sound and wise. I am only saying that in my judgment it is entirely *intra vires*. It does not touch the question of rate of interest. It does not undertake to prevent a company collecting the interest contracted for, but it does strictly within the constitutional rights of the legislature, permit evidence to be given outside of the contract itself in respect to its character and the circumstances under which it was made.

If disallowance be sought on the ground that this legislation is unsound, I am not venturing upon any stated argument. It was well considered and discussed in the legislature and it was the conviction of the members in view of the special investigation which took place before the committee of the House, that some restraint on loan companies should be made, and this was conceived to be the most convenient and effective form. But if disallowance be sought on the ground that we have exceeded the jurisdiction of the legislature in undertaking to deal with interest, I must, in the most explicit manner, claim that nothing of the kind has been done, that our Act in no wise interferes with the matter regulating interest.

Yours very truly,

J. W. LONGLEY,
Attorney General.

(Approved 16 November, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1904.

To His Excellency

The Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last sessions of the legislatures thereof (1904), as follows:—

* * * * *

Nova Scotia; 3 and 4 Edward VII.; received by the Secretary of State on 13th June, 1904.

There has been correspondence between the department of the undersigned and the Attorney General of Nova Scotia upon objections raised by the Canadian Birkbeck Investment and Savings Company with regard to chapter 4, intituled: "An Act relating to Loan Corporations."

Section 8 of this Act is as follows: "In any action in which any interest or any fine or penalty in respect to arrears of principal or interest at a rate exceeding seven per centum per annum is claimed upon any written instrument, such written instrument shall not be deemed to be evidence of the contract between the parties, but the burden shall be on the party claiming under such instrument of proving that the same truly sets forth the terms of said contract entered into, and that the said terms were fully explained to the party agreeing to pay such interest, fine or penalty."

The Attorney General was asked for a statement of the grounds upon which he justified this section as within the jurisdiction of the legislature, the subject of interest.

having been assigned to the exclusive control of parliament. It was stated that the effect of section 8 was certainly indirectly, if not directly, to prohibit the taking of interest by any written instrument in excess of seven per cent, and that no doubt this object might be accomplished by parliament; and it was stated that in the view of the Department of Justice the legislation complained of was inconsistent with the Dominion Acts and *ultra vires* of the province.

The Attorney General in reply states as follows: "Section 8 of chapter 4 does not in any way undertake or profess to regulate the rate of interest that either persons or corporations may legally charge. The only thing that the section proposed to do is to regulate contracts made between these corporations and individuals, which the provision of the British North America Act assigns to the exclusive jurisdiction of the Provincial Legislature in the matter of '*Property and Rights*'."

"It was brought to the attention of the legislature that agents of these corporations would induce parties in the country not familiar with commercial transactions to sign agreements respecting loans, which permitted the company to charge excessive rates of interest. We have no power to prevent the collections of excessive rates of interest, but we have power to say that the written contract shall not be conclusive evidence of the contract, but that the party relying upon this document to secure this excessive rate of interest must independently show that this contract represents the full transaction between the parties. And it also opens the door for the defendant to give evidence relating to the circumstances under which the contract was made.

"I am not undertaking at the present moment to say whether or not such legislation is sound and wise. I am only saying that in my judgment it is entirely *intra vires*. It does not touch the question of rate of interest. It does not undertake to prevent a company collecting the interest contracted for, but it does, strictly within the constitutional rights of the legislature, permit evidence to be given outside of the contract itself in respect to its character and the circumstances under which it was made.

"If disallowance be sought on the ground that this legislation is unsound, I am not venturing upon any stated argument. It was well considered and discussed in the legislature, and it was the conviction of the members, in view of the special investigation which took place before the Committee of the House, that some restraint on loan companies should be made, and this was conceived to be the most convenient and effective form. But if disallowance be sought on the ground that we have exceeded the jurisdiction of the legislature in undertaking to deal with interest, I must in the most explicit manner claim that nothing of the kind has been done, that our Act in no wise interferes with the matter regulating interest."

The undersigned, upon further consideration, and having paid careful attention to the observations of the learned Attorney General, adheres to the opinion that the section quoted, providing as it does that where it is sought to recover interest exceeding 7 per cent upon any written instrument such written instrument shall not be deemed to be evidence of the contract between the parties, encroaches upon the exclusive authority of parliament with regard to interest; and, as the provision appears to be designed to promote litigation and disturb the ordinary rules of evidence and the obligation of contracts with regard to a matter which has been committed to the jurisdiction of parliament, the undersigned considers that this section should not be allowed to stand, and he, therefore, recommends that inquiry be made of the Lieutenant Governor of Nova Scotia as to whether this section will be repealed at the next session of the legislature, and within the time limited for disallowance. Upon receiving a reply to this inquiry from the government of Nova Scotia it should be referred to the undersigned.

An objection has been raised by Mr. R. I. Hart, of Halifax, to

Chapter 49, intituled "An Act to amend Chapter 51 of the Acts of 1900, intituled 'An Act relating to the City of Halifax,' and it is stated that this Act was prepared, promoted and passed simply to enable certain present aldermen of the City of Halifax, who have not the required qualification, to retain their seats, and to enable them to

qualify for re-election. It is stated further that the Standing Orders of the Legislative Council of the Province were not complied with in the procedure adopted for passing this Bill, no notice of the Bill having been given either to the mayor, the city clerk or any of the civic officials, and it is said that these officers, and especially the citizens of Halifax, denounce the whole proceedings.

The undersigned does not consider, however, that any of these grounds afford justification for interference by Your Excellency. If injustice has been done it may be remedied by the legislature, and the undersigned apprehends that the legislature is the constitutional judge of such objections as those raised by Mr. Hart. He is, therefore, not prepared to recommend disallowance, but he recommends that Mr. Hart be informed of the grounds upon which Your Excellency's Government has proceeded.

There are a number of Acts affecting corporations containing a clause purporting to confer rights or capacity upon aliens with regard to the holding of stock and bonds and to become office holders. This provision, for reasons which have been heretofore frequently stated is, in the opinion of the undersigned, *ultra vires*, but not of sufficient consequence to call for disallowance of the statute.

The undersigned recommends that the remaining statutes of Nova Scotia be left to such operation as they may have.

* * * * *

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province, shall be communicated to the Lieutenant-Governor of the Province.

Humbly submitted.

C. FITZPATRICK,

Minister of Justice.

DOWNING STREET, 19 November, 1904.

SIR,—I have the honour to transmit, for the consideration of your ministers, a copy of a letter from the War Office, inclosing correspondence on the subject of a recent Act of the Legislature of Nova Scotia, excepting the children of "Naval and military persons" from the privilege of free education.

2. I should be glad if I could be informed of the reasons which induced the Provincial Government to allow this Act to be passed.

3. In forwarding to me the explanations of the Provincial Government, you will no doubt take into consideration the question whether they are sufficient to justify the Act being allowed to remain in operation.

I have the honour to be, sir,

Your most obedient humble servant,

ALFRED LYTTTELTON.

The Officer administering
the Government of Canada.

WAR OFFICE, LONDON, S.W., 10th November, 1904.

SIR,—I am commanded by the Army Council to forward for your perusal the attached copies of correspondence which has passed between this department and the General Officer Commanding the Regular Forces in Canada, from which it will be seen that not only are the "children of naval and military persons" stationed at Halifax, Nova Scotia, debarred by the terms of the Local Education Act from the privilege of free education, but school taxes are, in addition, included in the rents of the houses occupied by soldiers' families and paid to the local authorities by the landlords.

It seems to the Army Council to be unreasonable that, where taxes are paid, the children should be debarred from the benefits accruing therefrom, and I am to inquire whether Mr. Secretary Lyttelton is prepared to represent the matter to the Government of the Dominion of Canada, with a view, if possible, to the repeal of the restrictive clause in the Education Act in question.

I am, &c.,

E. W. D. WARD.

The Under Secretary of State,
Colonial Office.

EDUCATION ACT OF NOVA SCOTIA OF 1900

From the General Officer Commanding Regular Forces in Canada, to the Secretary of the Army Council, War Office, London, S.W.

HALIFAX, N.S., 25th March, 1904.

SIR,—I have the honour to report that Chapter 52, Revised Statutes, "Education Act of Nova Scotia" of 1900, has been amended as shown in attached certified true copies.

There are at present 139 children attending Civilian schools for whom after 31st March, payment will be required amounting to £143 for tuition from the 1st April to the 31st December, 1904.

The present Military school accomodation is utilized to the utmost.

I have, &c.,

CHARLES PARSONS, Major-Gen.,
Commanding Regular Forces in Canada.

Extract from Chapter 52, Revised Statutes, 1900, "The Education Act"

Sec. 3. "All schools established under the provisions of this chapter shall be free schools, and every person over 5 years of age resident in a school section, shall have the right to attend the school in that section."

Extract from an Act to amend Chapter 52, Revised Statutes, 1900, "The Education Act"

(Passed the 3rd day of March, 1904)

"Section 3 of the Education Act, Chapter 52, Revised Statutes, 1900, is amended by adding thereto the following words:—

"Excepting the children of naval and military persons."

Certified true copies.

CHARLES PARSONS, Major-General,
Commanding Regular Forces in Canada.

Halifax, N.S., 25th March, 1904.

16th April, 1904.

SIR,—In reply to your letter, No. 13368/16, of the 25th ultimo, I am commanded to inform you that the payment of school fees for soldiers' children attending civil schools at Halifax, Nova Scotia, may be authorized by you under the provisions of Article 1275 of the Pay Warrant.

I am, &c.,

H. BOWLES, *Colonel A.A.G.*,
for the Director of Recruiting and Organization.

The General Commanding the Regular Forces in Canada,
Halifax, Nova Scotia.

ATTENDANCE OF MILITARY CHILDREN AT CIVIL SCHOOLS

From the General Officer Commanding, Regular Forces Canada, to the Secretary of the War Office, War Office, London, S.W.

HALIFAX, N.S., 26th September, 1904.

SIR,—I have the honour to report for your information, that although the children of soldiers at this station are prohibited from obtaining free education in the civil schools as reported to you in my letter C.L. 13368/16, dated 25th March, 1904, and your reply thereto, No. 50/Colonies/16 A.G., 4, dated 16th April, 1904, school taxes for the hired houses in which these children live are being paid.

The number of houses at present hired is 109, and the amount paid in school taxes per annum is £148.5s. This tax is paid to the city by landlords, and is included in the rents.

When the Education Act of Nova Scotia was amended as reported in my letter quoted above, the local School Board was approached with a view of obtaining remission of the school fees on the grounds that they were already paid by the payment of the school tax. After several meetings of the School Board my request was not entertained.

This extra fee of \$4 per child per annum, at present paid, seems unjust.

I attach a cutting from a local paper on the subject for your information.

I have, &c.,

CHARLES PARSONS, *Major General*,
Commanding Regular Forces, Canada.

(Approved 6 January, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, December 22, 1904.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a despatch of 19th ultimo from the Right Honourable the Principal Secretary of State for the Colonies to the officer administering the Government of Canada, asking to be informed of the reasons which induced the Government of Nova Scotia to allow to pass section 1 of chapter 8 of the Statutes of Nova Scotia, 1904, intitled "An Act to amend Chapter 52, Revised Statutes, 1900, 'The Education Act'."

The effect of this amendment is to except the children of naval and military persons from the right of attending the free schools in the school section in which they reside.

The Colonial Secretary remarks that Your Excellency's Government in forwarding to him the explanations of the Provincial Government will no doubt take into consideration the question whether such explanations are sufficient to justify the Act being allowed to remain in operation.

The undersigned recommends that the attention of the Lieutenant Governor of Nova Scotia be immediately called to this despatch, and that he be requested to forward the required explanations without delay.

He recommends further that Mr. Lyttelton be advised of the action so taken.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

ATTORNEY GENERAL OF NOVA SCOTIA,

HALIFAX, December 27, 1904.

DEAR SIR,—I received a few days ago a copy of the report of the Honourable the Minister of Justice to His Excellency the Governor General, dated the 29th October, 1904, in which, after giving full consideration to the representations I made at a former date, it is recommended that chapter 4 of the Acts of 1904, entitled "An Act relating to Loan Corporations" be disallowed on the ground that section 8 of the said Act is *ultra vires*.

The Minister makes the proviso that inquiry be made of the Lieutenant Governor of Nova Scotia as to whether this section will be repealed at the next session of the Legislature and within the time limit for disallowance.

I may say in response to this that in view of the strong opinions which I entertain as to the validity of this section and the strong doubt I entertain as to the feeling and temper of the legislature in respect of the matter, I do not care to take the responsibility of advising that any assurances be given in this regard. If the Minister chooses to reserve action until after the legislature has met some action may be taken, but no official assurances of such action are possible at the present time.

Yours truly,

J. W. LONGLEY.

The Honourable CHARLES FITZPATRICK,
Minister of Justice, Ottawa.

HALIFAX, N.S., December 27, 1904.

Hon. C. FITZPATRICK,
Minister of Justice,
Ottawa, Canada.

DEAR SIR,—Attorney General Longley told me to-day that it was your intention to advise the disallowance of the Remedial Act in respect to Mortgages, passed by the Parliament of Nova Scotia last winter.

I hope you will not move in this matter until the Dominion members from Nova Scotia will have an opportunity of discussing this matter with you. This Act was drafted by the law clerk of the House after a parliamentary inquiry at which the loan companies were largely represented, and the Act was introduced and carried through both Houses by the Government, and was so introduced after fully considering the Ontario Act on the same or similar subject. The Act has the full approval of the Supreme Court of Nova Scotia, and the legislation was prepared at the suggestion of some of the judges, and it should not, in my humble opinion, be disallowed if found to be within the scope and jurisdiction of the Legislature of Nova Scotia, upon a

liberal and broad application of the terms of our constitution. When we have explained to you the hardships that this Act was aimed at, I am sure you will be anxious to help us.

Yours very truly,

D. D. McKENZIE, M.P.,
North Cape Breton and Victoria.

DEPARTMENT OF JUSTICE, OTTAWA, January 3rd, 1905.

DEAR SIR,—I beg to acknowledge receipt of your letter of the 27th ultimo with respect to chapter 4 of the Acts of the Province of Nova Scotia for 1904, and to say in reply thereto that I have no objection to allowing the consideration of this Act to stand over until the opening of the session.

Yours very truly,

C. FITZPATRICK.

D. D. McKENZIE, Esq., M.P.,
Halifax, N.S.

Transmitted to the Secretary of State by the Lieutenant Governor 4 February, 1905.

PROVINCIAL SECRETARY, HALIFAX, February 2, 1905.

The Honourable
The Secretary of State,
Ottawa.

SIR,—Referring to a communication of the 16th ultimo, from His Honour the Lieutenant Governor, in which it is stated that a despatch had been received from the Secretary of State for the Colonies asking to be informed of the reasons which induced the government to pass section 1, chapter 8 of the Acts of Nova Scotia, 1903-4, I have the honour to inform His Honour that the Act in question was not passed at the instance of the government. It was introduced by a private member representing the county of Halifax, at the instance, as I am advised, of the School Board of this city. It was contended on the part of those who supported the measure that it would not be fair or reasonable that the children of soldiers residing in barracks, whose fathers were entirely exempt from taxation, should be imposed upon the school authorities of the city of Halifax. On the other hand, it was urged on behalf of some at least of the military of this city that they have rented houses and the city taxation imposed on the premises they occupy is regarded by the landlords in fixing the rent of the premises. I have also to inform His Honour that the question as to the advisability of repealing or amending the section in question will receive consideration at the ensuing session of the legislature.

I have the honour to be, sir,

Your obedient servant,

Lt.-Col. JONES,
Private Secretary.

G. H. MURRAY,
Provincial Secretary.

HOUSE OF COMMONS, OTTAWA, February 6, 1905.

SIR,—It has been brought to the notice of the undersigned members of the House of Commons, that you contemplated advising the "veto" of section 8 of chapter 4 of the Acts of the Legislature of Nova Scotia passed on the 3rd day of March, A.D. 1904, being an "Act relating to Loan Corporations," and we hasten to respectfully

protest against such section being vetoed, and in support of the contention that this section should be permitted to pass with the rest of the chapter. We desire to direct your attention to the debates and proceedings of the Assembly of Nova Scotia, 1903-4, pp. 207-212, both inclusive, and also to sections 20-25, both inclusive, of chapter 205, Revised Statutes of Ontario.

The undersigned respectfully submit that the passing of the chapter above referred to is within the constitutional powers of the Legislature of Nova Scotia, and should be allowed to remain the law of that province.

Respectfully yours,

Honourable CHARLES FITZPATRICK,
Minister of Justice of Canada,
Ottawa.

D. D. MCKENZIE,
J. H. SINCLAIR,
S. W. W. PICKUP,
DUNCAN FINLAYSON,
A. K. MACLEAN,
ALEX. JOHNSTON,
M. CARNEY.

DEPARTMENT OF JUSTICE, OTTAWA, March 29, 1905.

SIR,—Referring to your application for disallowance of Chapter 4 of the Acts of Nova Scotia, 1904, intituled "An Act relating to Loan Corporations," I am directed by the Minister of Justice to inform you that upon careful consideration he has decided not to recommend disallowance, but to leave the question as to the validity of the statute to be determined by the courts in any case which may arise.

I have the honour to be, sir,

Your obedient servant,

F. W. G. FITZGERALD, Esq.,
Managing Director,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Canadian Birkbeck Investment and Savings Company,
Toronto, Ont.

From Mr. Lyttelton to Lord Grey.

DOWNING STREET, March 21, 1905.

MY LORD,—I have the honour to acknowledge the receipt of Your Excellency's despatch No. 59, of the 19th ultimo, forwarding a communication from the Government of Nova Scotia on the subject of the provision in a recent Act of the legislature of that province, excepting "the children of naval and military persons" from the benefits of free education.

2. I learn with satisfaction from the letter of the Premier and Provincial Secretary that the advisability of repealing this illiberal measure will be considered during the present session of the Provincial Legislature. I trust that action will be taken to this effect; but should the legislature decide otherwise, I have to request that your Ministers will take into consideration the question of advising the exercise of your powers of disallowance in respect of the Act.

I have, &c.,

ALFRED LYTTELTON.

DEPARTMENT OF JUSTICE, OTTAWA, 15th May, 1905.

DEAR MR. LONGLEY,—There has recently been some correspondence between this Government and that of Nova Scotia with regard to section 1 of Chapter 8 of the Statutes of Nova Scotia, 1904, intituled "An Act to amend Chapter 52 of the Revised Statutes of 1900, 'The Education Act.'"

It is, I observe, stated by your Government that this Act was not passed at the instance of the Government, but was introduced by a private member representing the County of Halifax, at the instance of the School Board, and it is stated that the question as to the advisability of repealing or amending the section in question will receive consideration at the ensuing session of the Legislature.

Will you be good enough to inform me whether the section was repealed or amended at the last session, and if so, send me a copy of the amending Act.

As the time for disallowance is running out, and as the Imperial authorities are making further inquiries, I am writing you direct for this information, hoping to avoid the delay incident to despatches through the usual channels.

Yours very truly,

E. L. NEWCOMBE.

The Honourable J. W. LONGLEY, K.C.,
Attorney General.

ATTORNEY GENERAL OF NOVA SCOTIA,

HALIFAX, May 18th, 1905.

MY DEAR MR. NEWCOMBE,—Section 1, of Chapter 8, of the Acts of Nova Scotia, 1904, was repealed last session. I communicated fully by way of explanation to the Imperial authorities in respect of the conditions under which it was passed. There was practically no opposition in the House to its repeal.

Yours very truly,

J. W. LONGLEY,

E. L. NEWCOMBE, Esq., K.C.,
Deputy Minister of Justice.

5 EDWARD VII, 1905

(Approved 17 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of Nova Scotia, passed in the 5th year of His Majesty's reign, 1905, and received by the Secretary of State for Canada on 3rd July last, and he is of the opinion that these statutes may be left to such operation as they may have except the following, which will be specially considered:—

Chapter 38, intituled "An Act further to amend the Game Act."

Chapter 41, intituled "An Act relating to offences against Religion."

Chapter 134, intituled "An Act to incorporate the British American Coal and Railway Company, Limited."

Chapter 136, intituled "An Act to incorporate the Gold River Mines and Power Company, Limited."

Chapter 140, intituled "An Act to incorporate the Pictou Smelting Company, Limited."

Chapter 143, intituled "An Act to amend Chapter 158, Acts of 1902, intituled 'An Act to incorporate The Nova Scotia Fire Insurance Company.'"

Chapter 144, intituled "An Act to further amend the Acts relating to the Acadia Fire Insurance Company."

Chapter 147, intituled "An Act respecting the LaHave Marine Insurance Company, Limited."

Chapter 151, intituled "An Act to incorporate the Union Printing Company, Limited."

Chapter 152, intituled "An Act to incorporate the Maritime Loan and Mortgage Company, Limited."

Chapter 153, intituled "An Act to incorporate the Gazette Publishing Company, Limited."

Chapter 154, intituled "An Act to incorporate the Cape Breton Stock Company, Limited."

Chapter 155, intituled "An Act to incorporate the Stillman, Mineral Springs Company, Limited."

Chapter 159, intituled "An Act to amend Chapter 191, Acts of 1903, intituled 'An Act to incorporate the South Sea Sealing Company, Limited.'"

Chapter 160, intituled "An Act to incorporate The Old English Fertilizers Company, Limited"; and

Chapter 161, intituled "An Act to amend Chapter 155, Acts of 1900, entitled 'An Act to incorporate the Chapman Double Ball Bearing Company of Canada, Limited.'"

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 17 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 10th, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 38, intituled:—

"An Act further to amend the Game Act"

of the Statutes of Nova Scotia, 1905, and in recommending that it be left to such operation as it may have, he desires to reserve the objection that enactments of this character forbidding the killing of game and imposing penalties therefor relate to the criminal law, and are within the exclusive authority of parliament. This objection may, however, be conveniently determined by the courts when it arises, and the undersigned does not recommend disallowance.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved November 17, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 10th, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 41 of the statutes of Nova Scotia, 1905, intituled: "An Act relating to Offences against Religion."

This Act provides for appeal in certain cases to the Supreme Court from any judgment, order or conviction of a county court judge or stipendiary magistrate.

In so far as these provisions relate to offences against religion they are criminal provisions, and *ultra vires*, and in so far as they enact criminal procedure, they are likewise *ultra vires*. Whether the Act has any operation except in these two particulars is doubtful, but in any case it will be quite convenient for a court to give effect to these objections when they are raised. The undersigned, therefore, does not recommend disallowance, but he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved November 17, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 10th, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 134 of the statutes of Nova Scotia, 1905, intituled: "An Act to incorporate the British American Coal and Railway Company, Limited."

This Act incorporates a company with general powers to mine, quarry, work, mill and prepare for sale, sell and deal in certain minerals, to acquire lands and mining rights, to construct and operate railways, telegraphs, telephones, &c. It is not expressly provided that this business shall be carried on only in the province of Nova Scotia, but it is provided by section 6 that the company is authorized to transact any business out of the province necessary or incidental to any of the purposes for which the company is incorporated.

The undersigned does not suppose that the legislature intended that the company should exercise its powers of business beyond the limits of the province, and it is, of course, incompetent to the legislature to confer any powers to be so executed. As the statute reads, however, especially in view of section 6, it is open to the construction that the company may carry on an extra-provincial business.

The undersigned considers, therefore, that this statute should be amended so as to expressly confine the exercise of the company's powers to the province, and he recommends that inquiry be made of the Lieutenant Governor as to whether such an amendment will be enacted within the time limited for disallowance.

For similar reasons the undersigned considers that chapter 136, intituled: "An Act to incorporate the Gold River Mines and Power Company, Limited";

Chapter 140, intituled: "An Act to incorporate the Pictou Smelting Company, Limited";

Chapter 147, intituled: "An Act respecting the LaHave Marine Insurance Company, Limited";

Chapter 151, intituled: "An Act to incorporate the Union Printing Company, Limited";

Chapter 152, intituled: "An Act to incorporate the Maritime Loan and Mortgage Company, Limited";

Chapter 153, intituled: "An Act to incorporate the Gazette Publishing Company, Limited";

Chapter 154, intituled: "An Act to incorporate the Cape Breton Stock Company, Limited";

Chapter 155, intituled: "An Act to incorporate The Stillman Mineral Springs Company, Limited"; and,

Chapter 160, intituled: "An Act to incorporate the Old English Fertilizers Company, Limited," ought to be similarly amended, and the undersigned accordingly recommends that the Lieutenant Governor be requested to inform Your Excellency's government whether these chapters also will be amended in like manner.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved November 17, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 143 of the Statutes of Nova Scotia, 1905, intituled "An Act to amend chapter 158, Acts of 1902, entitled 'An Act to incorporate the Nova Scotia Fire Insurance Company.'"

This Act amends section 11, of Chapter 158, of the Acts of 1902, by which the Nova Scotia Fire Insurance Company was incorporated.

Section 11 provides that the company shall have power and authority within the Province of Nova Scotia to make and effect contracts of insurance, &c.; this being the section which defines the general powers of the company, and it will be observed that the business of the company is thereby properly confined to the Province of Nova Scotia. The amendment effected by Chapter 143 now in question is to strike out the words "within the Province of Nova Scotia," the intention apparently being to authorize the company to make these contracts and carry on its business outside of Nova Scotia.

This is an amendment which in the opinion of the undersigned cannot be allowed to stand. A provincial legislature has no power to incorporate companies except for provincial objects, and it has been held by the Judicial Committee of the Privy Council that the Dominion alone can constitute companies with power to carry on business throughout the Dominion or in the several provinces.

Before recommending disallowance of this Act, however, the undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the purpose of obtaining any observations which his government desires to submit, and so as to ascertain whether his Government will undertake to have the Act repealed within the time limited for disallowance.

Observations similar to the foregoing apply to Chapter 144, intituled: "An Act to further amend the Acts relating to the Acadia Fire Insurance Company," which not only repeals the words limiting the business of the company to Nova Scotia, but by section 2 expressly authorizes the company to comply with the laws of Canada, and of any province thereof wherein it proposes to carry on business, and to open agencies and appoint agencies in such places as the company considers necessary for carrying on its business.

The undersigned recommends, therefore, that a similar inquiry be made of the Lieutenant Governor with regard to the said Chapter 144.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved November 17, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 159 of the Statutes of Nova Scotia, 1905, intituled: "An Act to amend chapter 191, Acts of 1903, entitled 'An Act to incorporate the South Sea Sealing Company, Limited.'"

Chapter 159 of the Acts of 1903, which is amended by the statute now in question, incorporated the South Sea Sealing Company, Limited, with very broad powers, perhaps broader than should have been allowed to pass, but by section 15 it was provided that the head office of the company should be at Halifax, or at such place in Nova Scotia as the directors might determine.

Section 3 of the present Act amends the said section 15 by striking out the words "Nova Scotia" and substituting therefor the words "The Dominion of Canada," so that the original section now reads "the head office of the company shall be at Halifax, or at such place in the Dominion of Canada as the directors determine."

It is not in the opinion of the undersigned, for reasons which have been explained in reports on some of the earlier chapters of the Nova Scotia statutes of 1905, competent to the legislature to authorize a company to have its head office out of the province.

Chapter 161, intituled "An Act to amend chapter 155, Acts of 1900, entitled 'An Act to incorporate the Chapman Double Ball Bearing Company of Canada, Limited.'"

This Act is subject to an objection of the same kind as that hereinbefore stated, because by section 3 it is provided that the head office of the company may be in such place either within or without the Province of Nova Scotia as may be prescribed by the by-laws of the company.

The undersigned considers, therefore, that these Acts, chapters 159 and 161, ought to be disallowed unless the provisions in question are repealed with the time limited for disallowance.

The undersigned accordingly recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, with a request that he inform Your Excellency's Government whether these Acts will be so amended at the next session of the legislature.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor 6 June, 1906.

HALIFAX, June 4, 1906.

SIR,—I am directed by the Provincial Secretary to inclose for transmission to His Excellency the Governor General a letter from the Attorney General to the Provincial Secretary covering memoranda by the Attorney General respecting the objections raised by the Minister of Justice to chapters 134, 136, 140, 147, 151, 152, 153, 154, 155 and 160; chapters 41, 38, 159, 161, 143 and 144 of the Acts of 1905 of the Legislature of Nova Scotia.

I have the honour to be, sir,

Your obedient servant,

FREDK. F. MATHERS,
Deputy Provincial Secretary.

Lt.-Col. JONES, Private Secretary,
Government House.

MEMORANDUM on the report of the Minister of Justice as to Chapter 38 of the Acts of 1905, of the Legislature of Nova Scotia.

The undersigned has had under consideration the report of the Minister of Justice to His Excellency the Governor General approved of by His Excellency in Council on the 17th of November, 1905, referring to Chapter 38 of the Acts of the Legislature of Nova Scotia for the session of 1905, intituled, "An Act further to amend the Game Act," recommending that it be left to such operation as it may have and reserving the objection that enactments forbidding the killing of game and the imposing of penalties therefor relate to the criminal law, and are therefore within the exclusive authority of parliament.

He begs respectively to submit that this enactment is an amendment of Chapter 101 of the Revised Statutes of Nova Scotia, 1909, "of the preservation of game," and has for its object entirely the protection and preservation of game within any county or counties or the whole province and that the imposition of penalties for that purpose does not bring this amendment within the sphere of criminal law. The enactment therefore is within the exclusive authority of the legislature.

Respectfully submitted,

ARTHUR DRYSDALE,

Attorney-General.

Halifax, 24th April, 1906.

MEMORANDUM on the report of the Minister of Justice as to Chapter 41 of the Acts of 1905 of the Legislature of Nova Scotia.

The undersigned has had under consideration the report of the Minister of Justice to His Excellency the Governor General, approved of by His Excellency in Council on the 17th of November, 1905, referring to Chapter 41 of the Acts of the Legislature of Nova Scotia for the session of 1905, intituled "An Act relating to offences against Religion," recommending that a copy of such report be transmitted to His Honour the Lieutenant Governor for the information of his government, and begs respectfully to submit that he recognizes the force of the objections stated by the Minister of Justice and concurs in the opinion that it is desirable for a court to decide upon the validity of these objections whenever they are raised.

Respectfully submitted,

ARTHUR DRYSDALE,

Attorney-General.

Halifax, 24th April, 1906.

MEMORANDUM on the report of the Minister of Justice as to Chapters 134, 136, 140, 147, 151, 152, 153, 154, 155, 160 of the Acts of 1905 of the Legislature of Nova Scotia.

The undersigned has had under consideration the Report of the Minister of Justice to His Excellency the Governor General approved of by His Excellency in Council on the 17th of November, 1905, referring to Chapters 134, 136, 140, 147, 151, 152, 153, 154, 155 and 160 raising the objection that said statutes are open to the construction that the companies thereby incorporated may carry on an extra-provincial business and recommending that inquiry be made of His Honour the Lieutenant Governor as to whether such an amendment will be enacted as will expressly confine the exercise of the powers of such companies to the province of Nova Scotia and begs respectfully to submit as follows:—

(1) As to Chapter 136, intituled "An Act to incorporate the Gold River Mines and Power Company, Limited," Chapter 147, intituled "An Act respecting the La

Have Marine Insurance Company, Limited," Chapter 151, intituled "An Act to incorporate the Union Printing Company, Limited," Chapter 152, intituled "An Act to incorporate the Maritime Loan and Mortgage Company, Limited," and Chapter 153, intituled "An Act to incorporate the Gazette Publishing Company, Limited," that, while these Acts of Incorporation do not in terms provide that the business of the respective companies shall be carried on only in the province of Nova Scotia yet as the jurisdiction of the legislature only extends to the province these Acts empower them only to exercise the powers conferred upon them within the province. With any business transacted by these companies respectively beyond the province the legislature and courts of Nova Scotia are not concerned beyond the provisions of their acts of incorporation generally. If these companies undertake to extend their business, make contracts and avail themselves of the protection of the courts of any other country, they should be at liberty to do so where by the laws of comity among nations such corporations are recognized and permitted to make contracts and to sue and be sued in the courts. In such cases the corporation is bound as to any transaction both by the provision of its Acts of Incorporation and by the laws of the country where the transaction occurs. The principle is now well established that a corporation duly created in one country is recognized as a corporation by other countries. Laws regulating the operation of foreign corporations are found on the statute books of nearly all countries. To amend these acts of incorporation so as to expressly confine the exercise of the companies' powers to this province should be to prohibit and prevent them from taking advantage of the law of comity which is almost universally recognized.

He, therefore, begs to submit that this legislation should be left to its operation.

(2) As to chapter 154, intituled: "An Act to incorporate the British American Coal and Railway Company, Limited," that except as to section 6 the above expression of opinion applies, and as to section 6 he accedes to the view of the Minister of Justice that it purports to authorize the transaction of business without the province, and the legislature of Nova Scotia has accordingly repealed this section.

As to chapter 140, intituled: "An Act to Incorporate the Pictou Smelting Company, Limited," that the same remark applies, and the legislature of Nova Scotia has accordingly repealed section 6 of that Act.

As to chapter 154, intituled: "An Act to Incorporate the Cape Breton Stock Company, Limited," the same remark applies, and the legislature has accordingly repealed section 4 of that Act.

As to Chapter 155, intituled: "An Act to Incorporate the Stillman Mineral Springs Company, Limited," section 6 has for the same reason been repealed.

The same remarks applies to chapter 160, intituled: "An Act to Incorporate the Old English Fertilizers Company, Limited," and accordingly clause *p* of section 2 and section 23 of that Act have been repealed.

Respectfully submitted,

ARTHUR DRYSDALE,

Attorney General.

HALIFAX, 24th April, 1906.

MEMORANDUM on the Report of the Minister of Justice as to Chapters 143 and 144 of the Acts of 1905 of the Legislature of Nova Scotia

The undersigned has had under consideration the report of the Minister of Justice to His Excellency the Governor General, approved of by His Excellency in Council on the 17th of November, 1905, referring to chapters 143 and 144 of the Acts of the legislature of Nova Scotia for the session of 1905, stating that the provincial legislature has no power to incorporate companies except for provincial objects, and recommending that a copy of his report be transmitted to His Honour the Lieutenant

Governor of Nova Scotia, for the purpose of obtaining any observations which his government desires to submit, and to ascertain whether his government will undertake to have the Act repealed within the time limited for disallowance.

The undersigned desires to repeat the observations made in his report concerning chapters 134, 136, 140, 147, 151, 152, 153, 154, 155 and 160, and states that regarding the amendment made by said chapter 143 intituled: "An Act to amend Chapter 158; Acts of 1902, entitled: 'An Act to Incorporate The Nova Scotia Fire Insurance Company,'" it simply removes a disability imposed by the Act of Incorporation upon the Nova Scotia Fire Insurance Company to make contracts outside the province of Nova Scotia. It does not purport to confer powers upon the company to do any acts without the province.

He further desires to draw attention to the fact that the amendment was made in order that the company might take advantage of the provisions of any statutes of Canada respecting insurance, and to permit this company to obtain a license from His Excellency the Governor General in Council to do business elsewhere in Canada than the province of Nova Scotia; the undersigned is informed that such a license has been issued to this company. He, therefore, submits that the Act should be left to its operation.

Regarding the amendments made by said chapter 144, intituled: "An Act to further amend the Acts relating to the Acadia Fire Insurance Company," that he desires to make the same observations and to state further that in the consolidation of the Acts relating to the Acadia Fire Insurance Company passed at the present session of the legislature of Nova Scotia this chapter has been repealed.

Respectfully submitted,

ARTHUR DRYSDALE,

Attorney General.

HALIFAX, 24th April, 1906.

MEMORANDUM on the Report of the Minister of Justice as to Chapters 159 and 161 of the Acts of 1905 of the Legislature of Nova Scotia.

The undersigned has had under consideration the report of the Minister of Justice to His Excellency the Governor General, approved of by His Excellency in Council on the 17th of November, 1905, referring to chapters 159 and 161 of the Acts of the Legislature of Nova Scotia for the session of 1905, stating that it is not competent to the Legislature of Nova Scotia to authorize a company to have its head offices out of the province, and inquiring whether these Acts will be amended at the next session of the legislature, the undersigned begs respectfully to submit as follows:—

1. As to chapter 159 of the Acts of the Legislature of Nova Scotia, intituled: "An Act to amend chapter 191, Acts of 1903, intituled 'An Act to incorporate the South Sea Sealing Company, Limited,'" that at the present session of the Legislature of Nova Scotia, clause *f* of section 3 of said Act, by which section 15 of the original Act of incorporation was amended so as to read "the head office of the company shall be at Halifax or at such place in the Dominion of Canada as the directors determine," has been repealed; and that the amending Act further enacts that "the head office of the company shall be at such place as the directors determine."

As to chapter 161, intituled: "An Act to amend chapter 155, Acts of 1900, entitled 'An Act to incorporate the Chapman Double Ball Bearing Company, of Canada, Limited,'" he begs to state that sections 2 and 3 relating to the head office and the meetings of the company have been repealed.

Respectfully submitted,

ARTHUR DRYSDALE,

Attorney General.

HALIFAX, 24th April, 1906.

(Approved 7 July, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, 29th June, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a despatch of the Lieutenant Governor of Nova Scotia of 6th instant, transmitting a letter from the Deputy Provincial Secretary of Nova Scotia with reports of the Attorney General as to certain Acts of the Legislature of Nova Scotia, 1906, as to which the attention of the government of Nova Scotia was particularly directed by orders of Your Excellency in Council of 10th November last.

As to Chapter 134, intituled "An Act to incorporate the British American Coal and Railway Company, Limited," the Attorney General states that section 6 has been repealed.

As to chapter 140, intituled "An Act to incorporate the Pictou Smelting Company, Limited," the Attorney General states that section 6 has been repealed.

As to chapter 154, intituled "An Act to incorporate the Cape Breton Stock Company, Limited," the Attorney General states that section 4 has been repealed.

As to chapter 155, intituled "An Act to incorporate the Stillman Mineral Springs Company, Limited," the Attorney General states that section 6 has been repealed.

As to chapter 160, intituled "An Act to incorporate the Old English Fertilizers, Limited," the Attorney General states that clause (p) of section 2, and section 23 have been repealed.

As to chapter 136, intituled "An Act to incorporate the Gold River Mines and Power Company, Limited."

147, intituled "An Act respecting the LaHave Marine Insurance Company, Limited";

151, intituled "An Act to incorporate the Union Printing Company, Limited";

152, intituled "An Act to incorporate the Maritime Loan and Mortgage Company, Limited"; and

153, intituled "An Act to incorporate the *Gazette* Publishing Company, Limited"; the Attorney General argues in effect that no powers are granted beyond provincial authority, and that there is no occasion for limiting the business of these companies to Nova Scotia, especially as they may be recognized by the laws of other countries in which they desire to transact business.

The Attorney General does not appear to have considered, however, that the real force of the objection stated by the predecessor in office of the undersigned consists in the incompetency of a provincial legislature to confer any general capacity upon corporations.

The powers of a company incorporated by a province must be strictly limited to provincial objects, and it is, in the opinion of the undersigned, therefore, expedient that any charter or Act of incorporation granted or passed by provincial authority should be upon its face limited in accordance with the constitutional Act. If by the laws of any other country a company incorporated by the Legislature of Nova Scotia, and therefore incapable of doing business except for provincial objects, may nevertheless in such other country carry on business for objects not provincial, that is a question perhaps in which the undersigned is not concerned, though a company would no doubt in such circumstances in proper proceedings be compelled by the provincial courts to confine its business within the limits authorized by its constituent authority. In such a case it would be of no disadvantage to the company to have the limitation of its powers stated in the incorporating Act.

The undersigned does not, however, approve of the policy of a province conferring powers in terms so general as to apparently authorize these companies to engage in foreign business, which is not authorized by the laws of Canada, and in the circumstances the undersigned apprehends probably not authorized by the law of any foreign country.

Inasmuch, however, as the sections above-mentioned have been repealed, and since the disallowance of these Acts under the present circumstances might lead to considerable embarrassment, the undersigned does not recommend disallowance, but he recommends this report, if approved, for the consideration of the Government of Nova Scotia, especially with reference to the consideration of future Bills for incorporation of companies which may come before the legislature.

Chapter 159, intituled "An Act to amend chapter 191, Acts of 1903, entitled 'An Act to incorporate the South Sea Sealing Company, Limited.'" The Attorney General reports that clause (f) of section 3 has been repealed.

Chapter 161, intituled "An Act to amend chapter 155, Acts of 1900, entitled 'An Act to incorporate the Chapman Double Ball Bearing Company of Canada, Limited.'" The Attorney General reports that sections 2 and 3 have been repealed.

Chapter 144, "An Act to further amend the Acts relating to the Acadia Fire Insurance Company." The Attorney General states that the Acadia Fire Insurance Company's Acts were consolidated at the recent session, and that chapter 144 has been repealed. The objections to chapter 144, therefore, if they appear in the consolidated Act will be reconsidered, after the consolidated Act has been transmitted, and when the undersigned comes to report upon it.

The undersigned recommends, therefore, that for the reasons aforesaid the Acts above mentioned be left to such operation as they may have.

As to chapter 143, intituled "An Act to amend chapter 158, Acts of 1902 entitled 'An Act to incorporate the Nova Scotia Fire Insurance Company,'" the Attorney General states that the amendment simply removes a disability imposed by the Act of Incorporation upon the Nova Scotia Fire Insurance Company to make contracts outside of the Province of Nova Scotia, and that it does not purport to confer powers upon the company to do any acts without the province. The Attorney General adds that the amendment was made in order that the company may take advantage of the provisions of any statute of Canada respecting insurance, and to permit the company to obtain a license from the Governor General in Council to do business elsewhere in Canada than in the Province of Nova Scotia, and that he is informed that such license has been issued to the company.

This company is incorporated by chapter 58, Nova Scotia statutes of 1902, and by section 11 of that Act the company is authorized within the Province of Nova Scotia to make and effect contracts of fire insurance as to buildings, goods, vessels, or other personal property.

Chapter 143 contains only one provision. It amends the said section 11 by striking out the words "within the Province of Nova Scotia," so that by force of the amendment the section reads that the company shall have power to make and effect these contracts, and contains no limitation whatever.

The intention of the amendment, therefore, can only be to authorize the company to extend its business beyond the province, to open offices, make contracts and insure property outside of the province, and this intention seems to be admitted by the Attorney General.

In the opinion of the undersigned such powers are beyond the authority of a provincial legislature to grant, and the amendment is ineffective.

The undersigned would, therefore, recommend the disallowance of this statute were it not for the fact stated by the Attorney General that the amendment was made in order to enable the company to take advantage of the provisions of the Insurance Act, and that a Dominion license has since been issued to the company.

Upon reference to the Superintendent of Insurance, he reports that a Dominion license was issued to the Nova Scotia Fire Insurance Company on 3rd August last under the authority of an Order in Council of 22nd July last, which Order in Council was passed pursuant to clause (c) of section 3 of the Insurance Act. This section provides as follows:—

"3. The provisions of this Act shall not apply,—

"(a) To any company transacting, in Canada, ocean marine insurance exclusively; or,

"(b) To any policy of life insurance in Canada, issued previously to the twenty-second day of May, in the year one thousand eight hundred and sixty-eight, by any company which has not subsequently received a license; or,

"(c) To any company incorporated by an Act of the legislature of the late province of Canada, or by an Act of the legislature of any province now forming part of Canada, which carries on the business of insurance wholly within the limits of that province by the legislature of which it was incorporated, and which is within the exclusive control of the legislature of such province; but any such company may, by leave of the Governor in Council, on complying with the provisions of this Act, avail itself of the provisions of this Act, and if it so avail itself, the provisions of this Act shall thereafter apply to it, and such company shall have the power of transacting its business of insurance throughout Canada."

The undersigned has very grave doubts as to whether parliament has authority to authorize the Governor in Council to permit a company locally incorporated to transact business throughout the Dominion. This question will be the subject of further consideration, but in the meantime the undersigned does not in the circumstances recommend the disallowance of the said chapter 143.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

6 EDWARD VII, 1906

35 BEDFORD ROW, HALIFAX, N.S., June 15, 1906.

E. L. NEWCOMBE, Esq.,

Deputy Minister Justice,
Ottawa, Canada.

DEAR MR. NEWCOMBE,—We inclose you herewith an Act passed at the last session of the local legislature, which appears to us, at least in some of its sections, to be *ultra vires*. You will notice that the last section in particular will affect transportation companies, especially the Intercolonial Railway, as well as the wholesale liquor trade. Some of the other sections have the same effect. The whole Act seems opposed to the spirit of the Canada Temperance Act, which impliedly at least allows liquor to be brought into the counties where it is in force for the purpose of resale, and expressly provides for the sale of liquor by licensed vendors. Some doubts were expressed by members of the government when the legislation was introduced here as to the competency of the local house to pass it. We are interested on behalf of the wholesale liquor trade here in having the Act disallowed or repealed. The question for consideration at present is whether we should proceed by petition for a disallowance of this Act, or whether the government at Ottawa would take the matter up with a view either of securing its disallowance or make arrangements with the local authorities for its repeal. Perhaps, you will kindly advise us as to whether you consider it a matter which the government at Ottawa would take up of its own motion.

If convenient, we should like an answer to this at an early date, as there has been some unavoidable delay already in submitting the matter to you.

We understand that the trade in the province of New Brunswick, which last session by some previous arrangement with the local legislature here, passed a similar Act, and are willing to join the Nova Scotia people in having this legislation wiped off the Statute books if possible.

Yours truly,
DRYSDALE & McINNES.

THE CANADIAN BIRKBECK INVESTMENT AND SAVINGS COMPANY

TORONTO, 30th July, 1906.

E. L. NEWCOMBE, Esq., K.C.,
Deputy Minister of Justice,
Ottawa.

DEAR SIR,—On behalf of this company, I beg leave to bring to the notice of the Department of Justice certain provisions of an Act passed on the 28th day of April last by the Legislature of Nova Scotia, entitled "An Act to Amend Chapter 4, Acts of 1903-4, entitled 'An Act Relating to Loan Corporations.'" A copy of this Act is annexed hereto and 11th section of which enacts as follows:—

"Every loan corporation holding a certificate of registry under this Act, shall, on or before the last days of March, June, September and December respectively, in each year, during the currency of its certificate of registry, deposit and keep deposited with the Provincial Treasurer as security for the payment of the just claims of the creditors and subscribers to or holders of shares in such loan corporation residing within this province, all mortgages and other securities taken by it in the usual course of business within this province during the three months immediately preceding."

The subsection following provides that in the absence of mortgages or other securities of the value of \$25,000, the company shall be required to keep deposited with the Provincial Treasurer the sum of \$25,000 in cash, or in securities satisfactory to the Provincial Treasurer.

It will be observed that it is declared that this deposit is to be held "as security for the payment of the just claims of the creditors and subscribers to or holders of shares in such loan corporation residing within this province." Failure to comply with this requirement subjects the company to the penalty of having its certificate of registry cancelled (section 13).

We are of opinion that the legislature of Nova Scotia can properly make enactments having for their purpose the determining or insuring the financial responsibility of companies doing business within the province. But as to the legality of the provision above quoted, in so far as it affects companies incorporated by the parliament of Canada, and as to the power of a legislature to assume to itself the right to hypothecate a particular body of securities for the exclusive benefit of shareholders (who may be numerically few) within the province, we have grave doubt.

The language of the section quoted, and the assumption that underlies it, are unfamiliar to us. We are not able to see how the legislature of Nova Scotia can legislate certain shareholders within that province into a privileged and preferential position in a public company as compared with shareholders in other provinces; nor are we able to conceive that in the case of a Dominion company the provisions of the Winding-up Act, in the event of liquidation, would not apply.

In the case especially of companies borrowing money from the public, either in the way of deposits or debentures, we do not question the right of the legislature to require that they shall have adequate resources behind them for the fulfilment of their obligations, whether in the form of paid up capital or, if a company of provincial creation, by a deposit of securities. That would be a matter of reasonable domestic legislation such as we imagine could be held to come within the ambit of a provincial legislature. So far as Nova Scotia corporations are concerned the legislature could make such regulations as they saw fit. Their right is not absolute, we submit, in the case of companies deriving their powers from the parliament of Canada.

In the present case we are required to hypothecate and keep deposited with the provincial treasurer of Nova Scotia \$25,000 in mortgages of this company, which are the property of its proprietors generally, not for the benefit of its creditors generally

or its shareholders generally, but for the special advantage of such shareholders as may be resident in Nova Scotia.

This company has no creditors in Nova Scotia. It has neither depositors or debenture holders there, while such few shareholders as it has in that province (and they are very few) cannot, in any proper sense of the term, be defined as creditors.

The business of this company in Nova Scotia has been a mortgage business entirely, and whilst it has a large number of mortgage debtors in the province, it has not one creditor properly so called.

We are not able to see how, in these circumstances, the legislature of Nova Scotia can legislate the few shareholders domiciled in that province into a privileged position as compared with our shareholders resident elsewhere.

In such circumstances the proposed hypothecation of a body of this company's securities for the special protection of creditors in a particular province who do not exist, is not only an anomaly, but, as we view it, a proceeding which the directors of this company would be blamable were they to allow themselves to be led into until the legality of this enactment and its application to a company deriving its powers from the Dominion parliament, and doing business over the Dominion generally, have been determined.

We beg leave, therefore, to submit this enactment to the consideration of the Department of Justice for such action as upon review the Minister of Justice may deem proper.

No legislation resembling this will be found in existence in any other province of Canada. It has been claimed by its authors that these provisions have been framed upon the law of British Columbia. But the law of British Columbia relates exclusively to provincial corporations. Our understanding has always been that before its final passage the British Columbia Act was a subject of communication between the Provincial and Dominion governments, and that as a result the province recognized the right of the Dominion to concurrent jurisdiction.

I am, dear sir,

Yours faithfully,

F. W. G. FITZGERALD,
Managing Director.

(Approved May 28, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, December 26th, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Acts of the Legislature of Nova Scotia, passed in the sixth year of His Majesty's reign, 1906, and received by the Secretary of State for Canada on 13th December instant.

Chapter 3, intituled "An Act to amend chapter 100, Revised Statutes, 1900, 'The Liquor License Act.'"

The attention of the undersigned has been directed to this statute on behalf of the wholesale liquor dealers who object that the statute is *ultra vires* as affecting the Canada Temperance Act.

It will be observed that a penalty is provided for sending liquor into any locality where the Canada Temperance Act is in force knowing, or having reason to believe, that the person to whom the liquor is sent is engaged in the sale of liquor contrary to law. It is also declared to be an offence to send liquor through the agency of a common carrier into any county, city or town where the Canada Temperance Act is in force, to be paid for on the delivery by such common carrier.

These seem to be provisions in aid of the Canada Temperance Act and, therefore, affecting a subject which has been comprehensively dealt with by parliament, and in this view they are not improbably *ultra vires*. The undersigned considers, however, that this question may conveniently be left to the determination of the courts, and would not, therefore, recommend disallowance.

Chapter 8, intituled "An Act to amend chapter 52, Revised Statutes, 1900; 'The Education Act'."

By the eighth section of this Act it is provided that "the school board of the city of Halifax may, by by-law, to be approved by the Council of Public Instruction, fix a fee for the tuition of the children of the permanent militia forces, and such fee must be paid before any such child has the right to attend the public schools in the City of Halifax."

This is exceptional legislation. Under the general school system of Nova Scotia no tuition fee is charged for children attending the public schools, but the schools are maintained by means of provincial grants and local taxation upon property or persons subject to assessment or taxation. Neither the quarters occupied by the permanent militia forces nor the pay of such forces being subject to taxation, the legislation in question seems to be an indirect attempt to levy contribution towards the schools of the city of Halifax from the members of the militia forces who necessarily must send their children to school there. Whether or not this provision falls within the authority of the legislature it seems to be an unjust discrimination imposed against the members of the force in respect of their service in the militia of Canada, and is strongly disapproved by the administration of the militia.

In these circumstances it appears to the undersigned that section 8 should not be allowed to remain in force, and he recommends that inquiry be made of the Lieutenant Governor to ascertain whether his government will undertake to have this section repealed within the time limited for disallowance.

Chapter 12, intituled "An Act to amend chapter 4, Acts of 1903-4, entitled 'An Act relating to Loan Corporations'."

The managing director of the Birkbeck Investment and Savings Company, of Toronto, has written to the Deputy Minister of Justice, objecting to certain provisions of this Act (copy of his letter, dated 30th July last submitted herewith).

The undersigned considers that the objections stated by Mr. Fitzgerald are of a serious character affecting in some particulars the constitutionality of this Act, but before finally considering the matter he recommends that a copy of the letter be transmitted to the Lieutenant Governor for the consideration of his Government, so that he may submit in reply any observations which he may advise with regard to the complaint stated.

The undersigned would especially like to know upon what grounds the advisors of the Lieutenant Governor justify the provision to take security from the assets of a company incorporated by parliament for the benefit of a special class of the shareholders of the company.

Chapter 172, intituled "An Act to consolidate and amend the Acts relating to 'The Halifax Fire Insurance Company'."

By section 4 it is provided that the company shall have power and authority within and without the province of Nova Scotia to make and effect contracts of insurance and reinsurance against loss or damage by fire or lightning to any house, dwelling, &c., and that it may establish agencies for the transaction of its business in such places as the directors may deem proper. These powers are in excess of provincial authority to grant. It is plain that a provincial legislature has no authority to incorporate a company to carry on business outside of the province, and this Act should, therefore, be amended by striking out the words "and without the province of" in the second line of the fourth section; otherwise, it will be the duty of the undersigned to recommend disallowance of this statute.

The undersigned recommends, therefore, that inquiry be made of the Lieutenant Governor as to whether this Act will be so amended within the time limited for disallowance.

Chapter 173, intituled "An Act to consolidate and amend the Acts relating to the Acadia Fire Insurance Company."

Power is conferred upon the company to carry on a general insurance business. Inasmuch as the legislature had authority only to incorporate for provincial purposes, the undersigned considers that the exercise of the powers of the company ought to be expressly limited by the statute to the province of Nova Scotia, and he recommends for the consideration of the local government the propriety of securing such an amendment at the next session of the legislature.

Similar observations apply to:

Chapter 180, intituled "An Act to incorporate the Canadian Beverages Company, Limited."

Chapter 181, intituled "An Act to incorporate the Empire Liniment Company, Limited."

Chapter 182, intituled "An Act to incorporate 'The M. E. Keefe Construction Company, Limited'."

Chapter 183, intituled "An Act to incorporate The John W. Lowe & Son, Limited."

Chapter 184, intituled "An Act to incorporate the Sydney Mines Athletic and Driving Association."

Chapter 197, intituled "An Act to incorporate The Amherst Co-operative Society, Limited."

Chapter 198, intituled "An Act to incorporate the British Canadian Co-operative Society."

Chapter 199, intituled "An Act to incorporate the Broughton Co-operative Society, Limited."

Chapter 202, intituled "An Act to incorporate the Glace Bay Co-operative Society, Limited."

Chapter 203, intituled "An Act to incorporate the Improved Dwellings Company, Limited."

Each of these last mentioned Acts should in the opinion of the undersigned be amended by specially limiting the business of the company to the province.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government, and that the Lieutenant Governor be asked to report as soon as possible as to the several Acts herein mentioned which require further consideration of the undersigned.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor 17 September 1907

MEMORANDUM on the Report of the Minister of Justice as to Chapters 3, 8, 12, 172, 173, 180, 181, 182, 183, 184, 197, 198, 199, 202 and 203 of the Acts of the Legislature of Nova Scotia for the year 1906.

The undersigned has had under consideration the Report of the Minister of Justice to His Excellency the Governor General in Council, approved on the 20th day of May, 1907, referring to chapters 3, 8, 12, 172, 173, 180, 181, 182, 183, 184, 197, 198, 199, 202 and 203 of the Acts of the Legislature of Nova Scotia for the year 1906, stating certain objections to said chapters, and recommending that a copy of said

report, if approved, should be transmitted to the Lieutenant Governor of Nova Scotia for the information of his Government, and that the Lieutenant Governor should be asked to report as soon as possible as to the several Acts mentioned in said report.

The undersigned begs respectfully to submit as follows:—

1. As to Chapter 3, intituled "An Act to amend chapter 100, R.S. 1900, 'The Liquor License Act'"; in the opinion of the Minister of Justice, this enactment affects a subject which has been comprehensibly dealt with by parliament, and that in this view it is not improbably *ultra vires*, but he considers that this question may conveniently be left to the determination of the courts.

2. As to Chapter 8, intituled "An Act to amend Chapter 52, R.S. 1900, 'The Education Act.'"

By section 8 of this Act it is provided that, "The School Board of the city of Halifax may, by by-law to be approved by the Council of Public Instruction, fix a fee for the tuition of the children of the permanent militia forces, and such fees must be paid before any such children have the right to attend the public schools in the city of Halifax."

The Minister of Justice states that this legislation seems to be an indirect attempt to levy contribution towards the schools of the city of Halifax, from the members of the militia forces, who necessarily must send their children to school there; that it seems to be an unjust discrimination imposed upon the members of the forces in respect of their service in the militia of Canada, and is strongly disapproved by the administration of the militia, and he recommends that inquiry be made of the Lieutenant Governor to ascertain whether his government will undertake to have this section repealed within the time granted for disallowance.

The undersigned begs to state that during all the time a garrison was maintained in the city of Halifax by the Imperial Government, that Government, at its own expense, furnished educational facilities to the children of the soldiers forming the garrison. When the duty and expense of maintaining a garrison at Halifax was assumed by the Government of Canada, no provision was made for the education of children of the members of the permanent militia forces, though all the school buildings used by the Imperial garrison are in the possession of the Militia Department, and these children are compelled to attend the public schools of the city of Halifax, thus imposing a considerable increase in the expenditure of the city for educational purposes.

The undersigned considers, however, that this is a matter which should more properly be taken up by the Board of School Commissioners of the city of Halifax and the Department of Militia of Canada, with a view to making a satisfactory arrangement. The undersigned begs to recommend the repeal of this section at the next session of the Legislature.

3. As to Chapter 12, intituled "An Act to amend Chapter 4 of the Acts of 1903-4, entitled 'An Act relating to Loan Corporations.'"

The undersigned notes that the managing director of the Birkbeck Investment and Savings Company of Toronto has written to the Deputy Minister of Justice, objecting to certain provisions of this Act, a copy of which letter has been submitted. The Minister of Justice considers that the objections stated in this letter are of a serious character, affecting in some particulars the constitutionality of this Act, and would especially like to know upon what grounds the advisers of the Lieutenant Governor justify the provision to take security over the assets of a company incorporated by parliament for the benefit of a special class of the shareholders of the company.

The undersigned begs to submit that the Act in question has for its object the imposing of conditions upon the carrying on of business within this province by loan corporations incorporated without the province. It is submitted that it is within the power of the Legislature of the province to impose such conditions as it may deem advisable for the protection of the people of the province in dealing with such corporations. The enactment in question, in so far as it relates to creditors of the loan cor-

porations, does not seem to be objected to; the objection seems to be to the provision for securing the subscribers to or holders of shares in such loan corporations within this province.

The undersigned is of opinion that the Legislature of the province has power to impose this condition upon a loan corporation, though incorporated by the Parliament of Canada. He would recommend, however, that the section be amended at the next session of the Legislature by limiting the security to subscribers to or holders of terminating or withdrawing shares in such loan corporations.

4. As to Chapter 172, intituled "An Act to consolidate and amend the Acts relating to 'The Halifax Fire Insurance Company.'"

The Minister of Justice states that by section 4 of this Act, it is provided that the company shall have power and authority within and without the Province of Nova Scotia to make and effect contracts of insurance and reinsurance against loss or damage by fire, &c. He is of opinion that the Provincial Legislature has no authority to incorporate a company to carry on business outside of the province, and this Act should therefore be amended by striking out the words, "and without the province" in the second line of the fourth section; otherwise it will be the duty of the Minister of Justice to recommend disallowance of this statute.

The undersigned begs to submit that said Chapter 172 is a consolidation of previously existing legislation; that by its Act of incorporation passed before Confederation (Chapter 91 of the Acts of 1859, as amended by Chapter 70 of the Acts of 1860 and Chapter 26 of the Acts of 1864) this company was authorized to carry on business within and without the Province of Nova Scotia. If the conferring of such power is beyond the authority of the Legislature of the province since Confederation, it follows that it must be beyond the authority of the Legislature of the province to take such power away.

The undersigned begs, however, to recommend that section 4 of said Chapter 172 be amended by striking out the words "within and without the Province of Nova Scotia" in lines one and two thereof.

The undersigned begs also to refer to his observation on Chapter 173.

5. As to Chapter 173, intituled "An Act to consolidate and amend the Acts relating to 'The Acadia Fire Insurance Company.'"

The undersigned begs to state that he is unable to agree with the contention of the Minister of Justice, that the exercise of the powers of the company ought to be expressly limited, by the statute creating it, to the Province of Nova Scotia. Such an express limitation would seriously interfere with the business of companies incorporated by the Legislature of Nova Scotia. Business transactions without the province are necessarily incident to the carrying on of business by such companies within the province, and so long as other provinces and countries recognize the status of incorporations created by the Provincial Legislature, he submits that there can be no objection to the carrying on of such transactions. In the case of the insurance companies, he would refer to the provisions of section 4 of Chapter 34 of the Revised Statutes of Canada, 1906, where provision is made for the licensing of provincial fire insurance companies by the Governor General in Council, for the purpose of transacting the business of insurance throughout Canada.

The undersigned desires also to repeat the observations made in the Report of the Attorney General of Nova Scotia upon Chapters 143 and 144 of the Acts of the Legislature of Nova Scotia for the year 1905, dated 24th April, 1906, and to submit that he is unable at the present time to recommend such an amendment to Chapter 173 as is suggested by the Minister of Justice.

6. The undersigned begs to repeat the above observations regarding Chapter 173 as to the following Acts:—

Chapter 180, intituled "An Act to incorporate the Canadian Beverages Company, Limited.;"

Chapter 181, intituled "An Act to incorporate the Empire Liniment Company, Limited";

Chapter 182, intituled "An Act to incorporate the M. E. Keefe Construction Company, Limited";

Chapter 183, intituled "An Act to incorporate the John W. Lowe & Son, Limited";

Chapter 184, intituled "An Act to incorporate the Sydney Mines Athletic and Driving Association";

Chapter 197, intituled "An Act to incorporate the Amherst Co-operative Society, Limited";

Chapter 198, intituled "An Act to incorporate the British Canadian Co-operative Society."

Chapter 199, intituled "An Act to incorporate the Broughton Co-operative Society, Limited";

Chapter 202, intituled "An Act to incorporate the Glace Bay Co-operative Society, Limited," and

Chapter 203, intituled "An Act to incorporate the Improved Dwellings Company, Limited,"

and to state that he is unable to recommend the amendments to these chapters suggested by the Minister of Justice.

Respectfully submitted,

WILLIAM T. PIPES,

Attorney General.

To His Honour the Lieutenant Governor in Council.

(Approved 2 October, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, 27th September, 1907.

To His Excellency the Governor General in Council:

There has been referred to the undersigned the despatch of the Lieutenant Governor of Nova Scotia of 17th instant, transmitting a copy of a memorandum of the Attorney General of Nova Scotia with regard to the report of the undersigned upon the Nova Scotia legislation of 1906, approved by Your Excellency in Council on 28th of May last.

Several of the Acts mentioned in the report of the undersigned and in the memorandum of the Attorney General of Nova Scotia seem in the circumstances to call for a further report.

Chapter 8, intituled "An Act to amend Chapter 52, Revised Statutes, 1900, 'The Education Act.'"

The undersigned stated in his previous report that section 8 of this Act should not be allowed to remain in force, and he recommended that inquiry be made of the Lieutenant Governor to ascertain whether his Government would undertake to have this section repealed within the time limited for disallowance.

The Attorney General, after discussing to some extent the propriety of this legislation, states that he considers that it is a matter which should be taken up by the Board of School Commissioners of the City of Halifax and the Department of Militia, with a view to making a satisfactory arrangement, and he adds "the undersigned begs to recommend the repeal of this section at the next session of the legislature."

Inasmuch as the time for disallowance of this Act will expire on the 13th December next, and as there will probably be no session of the local legislature in the meantime the mere recommendation of the Attorney General that section 8 should

be repealed at the next session of the legislature is scarcely an adequate assurance. If the advisers of the Lieutenant Governor are prepared to undertake that at the next session a bill will be promoted by them and passed by the legislature repealing the said section, the undersigned considers that the Act may be allowed to remain in the meantime. In the absence, however, of a positive undertaking, the undersigned would deem it his duty to advise the disallowance of the Act.

The undersigned recommends that inquiry be made immediately of the Lieutenant Governor of Nova Scotia to ascertain whether his Government would give such assurance for the repeal of section 8 at the next session of the legislature.

Chapter 12, intituled "An Act to amend Chapter 4, Acts of 1903-4, entitled 'An Act relating to the Loan Corporation.'"

Certain objections to this Act were raised by the Managing Director of the Birkbeck Investment and Savings Company of Toronto, which were submitted for the consideration of the local Government, and the undersigned stated that he would especially like to know upon what grounds the advisers of the Lieutenant Governor justified the provision to take security over the assets of a company incorporated by parliament for the benefit of a special class of the shareholders of the company.

The Attorney General submits that the Act has for its object the imposing of conditions for the carrying on of business within the province by loan corporations incorporated outside of the province, and that this is competent to the legislature. He states, however, that he would recommend that "the section be amended at the next session of the legislature by limiting the security to subscribers to or holders of terminating or withdrawable shares in such loan corporations." Such an amendment would not be satisfactory. It would no doubt limit the application of the Act, but it would not affect the principle of which the undersigned complains. The project of the Act briefly stated, as affecting loan corporations incorporated by the Dominion Parliament, is to require deposits to be made with the Provincial Treasurer of Nova Scotia to secure the claims of creditors and shareholders residing within the province, thereby putting such creditors and shareholders upon a different footing from those residing elsewhere. This is, in the opinion of the undersigned, an interference with the constitution of such companies incompetent to a local legislature, or if competent, it is an interference which cannot be permitted consistently with the policy of the Dominion in incorporating and defining the powers of such companies and relations between the companies and their shareholders.

The undersigned considers, therefore, that this Act should be disallowed unless a satisfactory undertaking is given by the Local Government to have sections 11, 12, 13 and 14 of this Act repealed at the next session of the legislature; and he recommends that a further inquiry be addressed to the Lieutenant Governor to ascertain whether such an undertaking will be given for the repeal of these sections.

Chapter 172, intituled "An Act to Consolidate and Amend the Acts relating to 'The Halifax Fire Insurance Company.'"

The Attorney General recommends that "section 4 of said Chapter 172 be amended by striking out the words 'within and without the Province of Nova Scotia' in lines one and two thereof."

If, as in the case of the Acts already mentioned the Local Government will give a direct undertaking to see that these words are repealed at the next session of the legislature, the undersigned would, relying upon such undertaking, refrain from advising disallowance.

Chapter 173, intituled "An Act to Consolidate and Amend the Acts relating to the Acadia Fire Insurance Company," and the Acts subsequently mentioned in the memorandum of the Attorney General.

The undersigned, in refraining from further comment with regard to these Acts, does not wish to be understood as agreeing with the observations of the Attorney General, but any questions which may arise touching the business of these companies

transacted outside of Nova Scotia may be conveniently determined by the courts, and the undersigned will not recommend disallowance.

The undersigned recommends that a copy of this report, if approved, be forthwith transmitted to the Lieutenant Governor of Nova Scotia, with a request for an immediate reply.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

The Under Secretary of State.
Ottawa, Ont.

EXTRACT from a Report of the Executive Council for Nova Scotia, dated 5th November, 1907, approved by His Honour the Lieutenant Governor and forwarded by the Lieutenant Governor on 7 November, 1907.

The Council have had under consideration a report, dated 19th October, 1907, from the Attorney General respecting the further report of the Minister of Justice, dated 27th September, 1907, upon the statutes of Nova Scotia of 1906, approved by an Order of His Excellency the Governor General in Council, dated 2nd October, 1907.

The Council concur in the said report of the Attorney General and advise that the same be adopted.

FRED F. MATHERS,

Clerk of the Executive Council.

HALIFAX, N.S., October 19th, 1907.

To His Honour the Lieutenant Governor in Council:

The undersigned begs to acknowledge receipt of an order of His Excellency the Governor General in Council, dated October 2nd, 1907, approving a report of the Minister of Justice, dated 27th September, 1907, upon the Nova Scotia legislation of 1906.

The undersigned begs to report as follows:—

Chapter 8, intituled “An Act to amend Chapter 52, Revised Statutes, 1900, ‘The Education Act.’”

The undersigned begs to recommend that the Lieutenant Governor in Council undertake that at the next session there will be promoted by them and passed by the legislature a Bill repealing Section 8 of said Act.

Chapter 12, intituled “An Act to amend Chapter 4, Acts of 1903-4, entitled ‘An Act relating to Loan Corporations.’”

The undersigned begs to repeat the observations made upon this Act in his previous memorandum, and to state further that in his opinion holders of terminating or withdrawable shares in such loan corporations are really creditors and that the legislation amended as proposed will be simply imposing conditions upon a Dominion or foreign corporation doing business within this province and for the purpose of protecting the people of this province in dealing with such corporations; it in no way interferes with the constitution of such corporations or the relations existing between such corporations and their shareholders; it amounts to no more than requiring a Dominion or foreign insurance company to make a deposit for the protection of policy holders within the province.

The undersigned is unable to recommend any further amendments to the Act in question than that recommended in his former memorandum.

Chapter 172, intituled “An Act to consolidate and amend the Acts relating to the ‘Halifax Fire Insurance Company.’”

The undersigned begs to recommend that the Lieutenant Governor in Council give a direct undertaking that the words "within and without the Province of Nova Scotia," in lines 1 and 2 of section 4 of this chapter, be repealed. He begs to repeat, however, that these words were in the Company's Act of Incorporation, passed before Confederation, and to submit that if the legislature has no power to re-enact these words, it has no power to repeal them.

The undersigned recommends that a copy of this report if approved be forthwith transmitted to His Excellency the Governor General.

Respectfully submitted,

WILLIAM T. PIPES,

Attorney General.

(No action was taken by the Governor in Council upon the above.)

7 EDWARD VII, 1907

(Approved 2 January, 1908)

DEPARTMENT OF JUSTICE, OTTAWA, 28th December, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the Seventh year of His Majesty's reign, (1907), and received by the Secretary of State for Canada on 9th August last, and he is of the opinion that these statutes may be left to such operation as they may have.

The undersigned observes, however, that as to Chapter 42, intituled "An Act to amend Chapter 142, Revised Statutes, 1900, entitled 'Of the Prevention of Frauds on Creditors by Secret Bills of Sale,'" it is provided under section 2 that the provisions of the Act shall extend to contracts made outside the Province of Nova Scotia. The Act requires that certain contracts of hiring, lease or bailment of personal chattels shall be evidenced by instruments in writing verified and registered as required by the statute and contains other provisions with respect to contracts of that kind.

The undersigned entertains no doubt that it is quite *ultra vires* of the legislature to provide that this Act shall have any effect except as to property within the province. The provision, however, seems to be incapable of doing harm since the courts would be in a position to determine any claim which might be made under it.

The undersigned does not consider, therefore, in view of the other provisions of the statute, that it should be disallowed on account of this section.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

8 EDWARD VII, 1908

(Approved 16 November, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 12th October, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the Eighth year of His Majesty's reign (1908), and received by the Secretary of State for Canada on 16th July last, and he is of opinion that these

statutes may be left to such operation as they may have, except Chapter 143 as to which the undersigned will make a separate report.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(Approved, 16 November, 1908)

OTTAWA, 6th November, 1908.

To His Excellency the Governor General in Council:

There has been referred to the undersigned the petition submitted herewith of the Dominion Antimony Company, Limited, and other companies, praying for the disallowance of an Act of the Legislature of Nova Scotia passed at the last session (1908), Chapter 143, intituled "An Act relating to the Nova Scotia Mines Development Company, Limited."

The reasons in support of the application are fully stated in the petition and the undersigned recommends that a copy of the petition be referred to the Lieutenant Governor of Nova Scotia for his consideration and any observations which he may desire to offer for the consideration of Your Excellency's Government in determining the matter of the said petition.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

To His Excellency the Right Honourable Sir Albert Henry George, Earl Grey, Viscount Howick, Baron Grey of Howick, in the County of Northumberland, Knight Grand Cross Most Distinguished Order of St. Michael and St. George, Governor General of Canada, in Council:

The petition of the undersigned, the Dominion Antimony Company, Limited, a body corporate, incorporated by Chapter 218, of the Acts of the Province of Nova Scotia for the year 1903; the American Metal Company, Limited, a Company whose head office is and who does business at 52 Broadway, New York City, and St. Helen's Smelting Company, Limited, a body corporate under the Companies' Act (Imperial) and whose head office is at Manchester, England.

Respectfully and humbly sheweth:

1. That on or about the 29th day of March, A.D. 1903, the Dominion Antimony Company, Limited, a body corporate, incorporated under Chapter 218, of the Acts of 1903, of the Province of Nova Scotia, was lawfully seized and possessed of certain lands in the County of Hants, and Province of Nova Scotia, which contained valuable deposits of antimony.

2. That for the past 28 years antimony has been mined on the property of the said Company by its predecessors in title with short periods of cessation of work; that the Dominion Antimony Company, Limited, began operations in 1903 and has spent since then upon the property more than two hundred thousand dollars. During the latter part of 1906 and 1907 the said Company has erected a concentrating mill at a cost of thirty-five thousand dollars, houses for its employees at a cost of twelve thousand dollars, has reconstructed its main shaft at a cost of ten thousand dollars

and has extended its levels to ascertain the extent of its ore deposits at a cost of approximately one hundred thousand dollars, that the principal vein on the property is developed to a depth of eight hundred feet with levels running off this main shaft, and that another mine has been opened on the property to a depth of about one hundred feet.

3. That your petitioners the Dominion Antimony Company, Limited, derives its title to the said lands from a grant under the Great Seal of the Province of Nova Scotia to William Smith, of Douglass, in the County of Hants, known as the "Douglass Grant" by Indenture dated the 9th day of December, A.D. 1809, and recorded in the office of the Commissioner of Crown Lands at Halifax.

4. That the minerals were reserved to the Crown by the following words of the said indenture, namely:—

"Saving and reserving nevertheless to Us, Our Heirs and Successors all coals and also gold, silver and other minerals."

5. That Chapter 2, of the Acts of the Legislature of Nova Scotia, in the year 1858, entitled "An Act to extend the operation of certain grants of land" was passed for the purpose of vesting all minerals other than gold, silver, tin, lead, copper, coal, iron, and precious metals, and by virtue of this Act antimony became the property of the owner of the soil. Said Act is as follows:—

"CHAPTER 2

An Act to extend the operation of certain Grants of Land.

(Passed the 24th day of March, A.D. 1858)

Whereas in consequence of a grant and demise made by the Crown to his late Royal Highness the Duke of York and Albany, dated the twenty-fifth day of August in the year one thousand eight hundred and twenty-six, of mines and minerals in this province, the reservation of minerals in grants of land from the Crown since that period have been more extensive than had previously been accustomed, and it being proposed that the said grant and demise shall be surrendered for the benefit of this province, it is proper, in the event of such surrender taking effect, to confer upon the parties entitled to such lands more extended rights in respect of certain minerals therein; and whereas from general words used in the reservation of mines and minerals in the grants of land in this province passed previously to August in the year one thousand eight hundred and twenty-six, doubts may arise and a more extended operation be given to such reservations than is expedient and proper.

Be it therefore enacted by the Governor, Council, and Assembly, as follows:—

1. This Act shall not take effect until an Act passed in the present session, entitled, "An Act for giving effect to the surrender to Her Majesty by the legal personal representatives of the late Duke of York and Albany and by the General Mining Association and their trustee of the mines in Nova Scotia and to the lease of part of such mines to the said Association" shall come into operation nor until Her Majesty's pleasure on this Act shall be known.

2. This Act shall apply to no mines or minerals which at the time this Act shall come into operation shall not by virtue of the surrender or otherwise be vested in the Crown or be under the control of the Legislature of this province, nor to any mines or minerals which shall be subject to any grant, sale, lease, or disposition thereof in force and subsisting at the time this Act shall come into operation, and shall not affect the then existing rights of any person or body corporate.

3. All letters patent under the Great Seal of this province for granting lands in this province in fee simple by the Crown to any person or body corporate, shall subject to the restriction in the second section, be construed and held as if the mines and minerals reserved in and by and excepted out of the operation of the said letters patent had been limited and confined to gold, silver, tin, lead, copper, coal, iron, and precious

stones only, and all other mines, minerals, ores, and earths, including iron stones, lime stones, slate stone, slate rock, gypsum, and clay, contained in the lands granted by such letters patent, excepting only gold, silver, tin, lead, copper, coal, iron, and precious stones, shall by virtue of this Act, be held and taken to have passed in and with the said lands and as part thereof under the said letters patent.

4. All conveyances and dispositions of any such lands shall be construed and held to convey and dispose of the mines and minerals, the subject of and intended to be affected by this Act and comprised within the lands conveyed or disposed of in the same manner as they would have done had those minerals originally passed to the grantees of such lands under the letters patent granting the same, unless that construction be inconsistent with the object and intention of the parties as plainly manifest on such conveyances and dispositions."

6. That Chapter 2, of the Acts of 1858, was amended by an Act passed in the year 1892, being Chapter 16, but this amending Act expressly reserves the rights of prior grantees.

7. That on the consolidation of the public statutes of Nova Scotia, in the year 1884, it was enacted (*see* page IV, of the Revised Statutes of Nova Scotia, 5th series, section 6), as follows:—

"6. All Acts in force on the first day of the present session which shall not have since expired or have been repealed by some such separate Act as mentioned in the fifth section, or by some chapter published in advance, as mentioned in the fourth section, shall continue in force subject to any amendments which may have been made thereto by any separate Act or Chapter published in advance until the publication of the Consolidated Statutes by proclamation as aforesaid, and the Acts so continued in force shall upon and after the publication of the Consolidated Statutes be repealed and cease to have any force or effect."

8. That on the consolidation of the public statutes of Nova Scotia, 1900, the said Chapter 2, of the Acts of 1858, was repealed in whole by Chapter 44, of the Acts of 1900, entitled "An Act respecting the Revised Statutes of Nova Scotia."

9. That Chapter 44, of the Acts of 1900, the Act bringing the Revised Statutes into force, provides as follows:—

"9. (1) The repeal of the said statutes and provisions shall not affect—

(c) any act, deed, right, title, interest, grant, assurance, descent, will, registry, by-law, rule, regulation, contract, lien, charge, matter, or thing, had, done, made, acquired, established or existing at the time of such repeal.

(2) Such repeal shall not defeat, disturb invalidate or prejudicially affect any other matter or thing whatsoever had, done, completed, existing or pending at the time of such repeal.

(3) But every such penalty, forfeiture and liability, every such action, suit, judgment, decree, certificate, execution, prosecution, process, order, rule, proceeding, matter or thing; every such act, deed, right, title, interest, grant, assurance, descent, will, registry, by-law, rule, regulation, contract, lien, charge, matter or thing; every such office, appointment, commission, salary, allowance, security and duty; every such marriage certificate, and registry thereof, and every such other matter and thing, and the force and effect thereof respectively, may and shall remain and continue as if no such repeal had taken place, and so far as necessary may and shall be continued, prosecuted, enforced and proceeded with under the said Revised Statutes and other statutes and laws having force in this province, so far as applicable thereto, and subject to the provisions of the said several statutes and laws,

and the Interpretation Act, Chapter 1, Revised Statutes, 1900, contains these sections:—

10. The repeal of any enactment shall not affect the validity, invalidity, effect, or consequences of anything already done or suffered—or any existing

status or capacity—or any right, title, obligation, or liability already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof—or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand—or any indemnity—or the proof of any past act or thing.

21. The repeal of an act confirming any provisions or legalizing any transactions shall not affect the validity of such provisions or transactions."

10. That the construction placed upon the reservation in the grant of 1809 by Chapter 2, of the Acts of 1858, Section 3, is not affected by any subsequent Act, and antimony is not a mineral reserved to the Crown by the grant of 1809, but is vested in the owners of the lands.

11. That by a deed of trust dated September 5, 1906, all the right, title and interest of the said The Dominion Antimony Company, Limited, in the said land or lands was granted and conveyed by way of mortgage to one Berthold Hochschild of the City and State of New York, Vice-President of the American Metal Company, Limited, in trust to secure an issue of bonds upon the property of the said Dominion Antimony Company for \$100,000 of which bonds for \$21,000 have been issued and sold.

12. That the said American Metal Company has advanced a large sum of money, namely \$21,000 to the said Dominion Antimony Company, Limited, upon security of said bonds, and proceedings have been instituted and are now pending against the Dominion Antimony Company, for the foreclosure and sale of the lands in question under the said trust deed.

13. That in the year 1906 the American Metal Company bought 1,876 shares of the capital stock of the said Dominion Antimony Company, Limited, and paid therefor in cash fifty thousand dollars.

14. That you Petitioners, The St. Helen's Smelting Company, Limited, recovered a judgment of the Supreme Court of Nova Scotia against the Dominion Antimony Company, Limited, on or about the 9th day of April, 1908, for damages in the amount of \$76,747.33 for breach of contract to deliver antimony ore, and a further judgment of the said Court dated on or about the 17th day of June, 1908, for \$2,067.71 for costs of the suit and appeal to the Supreme Court of Nova Scotia..

15. That both of said judgments were duly recorded on or about the respective dates thereof so as to bind the Mines, Minerals (including antimony) and other property of the said Dominion Antimony Company, Limited.

16. That the Dominion Antimony Company, Limited, has appealed against the said judgments to His Majesty in the Judicial Committee of His Privy Council and that pending the appeal the said St. Helen's Smelting Company, Limited, is not at liberty to enforce execution of the said judgment and the only security it has for the said judgment is the antimony mines and property of the said Company the antimony mines being very valuable and the other property of little value, except when used in connection with the mining, concentrating and milling of antimony.

17. That Alexander Hobrecker, a former director and shareholder of the Dominion Antimony Company, Limited, through his solicitor, represented to the Honourable Commissioner of Mines for the Province of Nova Scotia that the title to the antimony and antimony ore lying in or upon the said lands was vested in the Crown by virtue of the repeal of Chapter 2, of the Acts of 1858 aforesaid on the coming into force of the Revised Statutes of Nova Scotia, 1900.

18. That the said Honourable Commissioner was induced by these representations to issue to the said Alexander Hobrecker leases numbered 4 and 5 and bearing date the 2nd day of July, 1907, of the right to mine antimony in and upon the said lands and certain licenses to search for antimony thereon, bearing date the day of April 1908. That such leases were applied for on the 10th of March, 1908, and copies of same are annexed hereto as schedules "A" and "B." That under a Statute of the Province of Nova Scotia all leases bear date as of the 2nd day of July previous to the date on which they are issued, but said leases were applied for and issued on the said 10th day of March, 1908, and 25th day of March, 1908, respectively.

19. That the said Alexander Hobrecker thereupon transferred his interest in the said leases and licenses to search to the Nova Scotia Mines Development Company, Limited, a body corporate under the laws of the Province of Nova Scotia, by a deed of transfer dated the 15th day of April, A.D. 1908, and registered in the office of the Commissioner of Mines at Halifax in Book No. 5 of the coal leases, at pp. 195 and 196.

20. That the said Nova Scotia Mines Development Company, Limited, was and is a corporation created as your petitioners are informed and verily believe by the said Alexander Hobrecker solely for the purpose of acquiring the said leases and licenses to search. That the design and intention thereof was to procure the title to the mine owned by your petitioners, the Dominion Antimony Company, Limited, and prevent the Trustee for the bondholders from realizing on the security upon which the bonds were issued and prevent your petitioners, the St. Helen's Smelting Company, Limited, and the other creditors of the said Dominion Antimony Company, Limited, from recovering the amount of its and their respective claims.

Your petitioners are advised and verily believe that these leases and licenses to search so issued by the Commissioner of Mines conveyed to the said Alexander Hobrecker no title or rights whatever, inasmuch as the Crown had no title to the said minerals, the same being vested in the said Dominion Antimony Company, Limited, and that the rights secured to the owners of the lands of the Dominion Antimony Company, Limited, by Chapter 2, of the Acts of the year 1858 hereinbefore set out were not affected by the repeal of the said Act by the Revised Statutes, and that the rights of your petitioners the Dominion Antimony Company, Limited, to its property are preserved by the rules of law bearing on the construction of statutes as well as by the Acts bringing the Revised Statutes into force and the Interpretation Act hereinbefore set out.

22. That the said Alexander Hobrecker on the 16th day of April, A.D. 1908, procured a private Act to be passed by the Legislature of Nova Scotia entitled "An Act relating to the Nova Scotia Mines Development Company, Limited," being Chapter 143 of the Acts of Nova Scotia, 1908, which provides as follows:—

"CHAPTER 143

An Act relating to The Nova Scotia Mines Development Company, Limited.

(Passed the 16th day of April, A.D. 1908.)

Section 1. Transfer legalized.

Be it enacted by the Governor, Council, and Assembly, as follows:—

1. The Deed of Transfer made between Alexander Hobrecker, of the one part, and The Nova Scotia Mines Development Company, Limited, hereinafter referred to as the Company, of the other part, and dated the day of April, 1908, and registered at the Office of the Commissioner of Mines at Halifax, in Book , page , whereby two mining leases, numbered (4) and (5) respectively, and both dated the 2nd day of July, 1907, and registered in the office of the Commissioner of Mines at Halifax, at pages 195 and 196 respectively, Book No. 5 of Coal Leases, and the first and second licenses to search, both dated the day of April, 1908, and both registered at the office of the Commissioner of Mines at Halifax, in Book , page , is hereby ratified and confirmed and declared to be valid and subsisting, and the said leases and licenses to search, and the property, mining rights, easements, franchise, rights and privileges in the said leases and licenses to search more particularly referred to, are hereby declared to be valid and to be vested in the Company, and the said Alexander Hobrecker and the Company are hereby authorized and empowered to fulfil and carry out the said agreement and all the covenants, conditions and stipulations therein contained, according to its terms and tenor and to do all things necessary to carry out the said agreement, and the ten thousand shares

issued and allotted by the said The Nova Scotia Mines Development Company, Limited, to the said Alexander Hobrecker, as purchase price of the said leases and licenses to search, in the said deed of transfer referred to, are hereby declared to be valid and fully paid and non-assessable shares in the said The Nova Scotia Mines Development Company, Limited."

23. That the said Act was introduced into the Legislature of Nova Scotia on the 13th day of April, 1908, passed both branches of the Legislature before the 16th day of April, on which day it received the assent of the Lieutenant Governor. The schedules to said Act were not made part thereof, and the said Act gave no information as to what property was being vested by said Act in the said Nova Scotia Mines Development Company, Limited, or that the rights of any of your petitioners were affected thereby, and none of your petitioners had any notice or knowledge that said Act was being promoted, and your petitioners believe was passed without its object and intent, or the circumstances connected therewith, being known to the Legislature.

24. That it is now claimed by the said Alexander Hobrecker and the said Nova Scotia Mines Development Company, Limited, that in consequence of the aforesaid Act, Chapter 143, of the Acts of 1908, the title of the Dominion Antimony Company, Limited, to the said lands and to the antimony and antimony ore therein became and are vested in the said Nova Scotia Mines Development Company, Limited.

25. That if the said Act is not disallowed the assets of the Dominion Antimony Company, Limited, are seriously depreciated and made practically valueless and the bondholders and judgment creditors aforesaid will be deprived of their security and the capital stock rendered worthless to the stockholders.

26. That it is obviously unjust that the legal title of the Dominion Antimony Company, Limited, justly derived from the Grantee of the Crown should be taken without compensation or at all, from the said Company by means of an Act of the Legislature, and that great loss will be inflicted upon your petitioners unless said Act is disallowed.

Wherefore your petitioners humbly pray—

That Your Excellency may be pleased to disallow Chapter 143, of the Act of 1908, of the Province of Nova Scotia, entitled "An Act relating to the Nova Scotia Mines Development Company, Limited, and passed on the 16th day of April, A.D. 1908."

And as in duty bound your Petitioners will ever humbly pray.

Dated this 17th day of October, A.D. 1908.

DOMINION ANTIMONY COMPANY, LIMITED,

G. STERNFELD.

(Seal)

ST. HELEN'S SMELTING COMPANY, LIMITED,

by ROBT. E. HARRIS, its Attorney.

9 EDWARD VII, 1909

(Approved 6 April, 1910.)

DEPARTMENT OF JUSTICE, OTTAWA, 30 March, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the Ninth year of His Majesty's reign (1909), and received by the Secretary of State for Canada on 23rd August last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned desires to observe, however, that Chapter 53, intituled "An Act to amend Chapter 17, Acts of 1908, entitled 'An Act to Amend and Consolidate the Acts for the Preservation of Game,'" and Chapter 54, intituled "Act to Amend the Game Act, 1908," are subject to objection as relating to the criminal law. Laws making it an offence to kill game or to have dead game in possession, and providing punishment therefor, are doubtless within the authority of the Parliament of Canada to enact under its exclusive jurisdiction as to criminal law, and the undersigned considers it not improbable that such laws do not relate to any matter coming within any classes of subjects enumerated in Section 92 of the British North America Act, 1867, and that it is, therefore, incompetent to a provincial legislature to impose punishment by fine, penalty or imprisonment for any such cause.

Chapter 145, intituled "An Act to Amend Chapter 189, Acts of 1901, entitled 'An Act Respecting Lands of Archibald Foster, in Horton Township.'"

This Act amends Chapter 189 of the Nova Scotia Acts of 1901 by striking out the figures "59" and "60" wherever the same are mentioned in the said Act. These figures 59 and 60 are used in the said Chapter 189 as descriptive of certain lots of land in the Township of Horton, Nova Scotia, which with a number of other lots Archibald Foster, his heirs or assigns, is by the said Chapter 189 declared to be entitled to, locate, possess, own and enjoy. The undersigned has received correspondence on behalf of the persons now claiming title to the said lands under Archibald Foster objecting that the said Chapter 145, now under consideration, operates injuriously to affect the title declared by the former statute and since assigned by the said Archibald Foster.

The undersigned considers, however, without entering into the merits of the objection, that it is one which should be considered by the local legislature, which has undoubted jurisdiction over the whole subject. If, as stated, the legislature made a mistake in the enactment of the said Chapter 145, or if the facts were misrepresented, the matter may easily be set right by repeal of the last mentioned statute and the restoration of the said numbers 59 and 60 to their former places.

The undersigned does not consider that Your Excellency's Government ought to interfere.

Chapter 167, intituled "An Act to incorporate the Nova Scotia Power and Pulp Company."

By section 20 of this Act the Company is authorized to construct works in rivers, streams and lakes, and to pen back and hold the water for the purposes of creating power.

The undersigned observes that so far as the exercise of these powers may affect navigation the powers are beyond the legislative authority of the Provincial Legislature to confer. This section, however, clothes the Company with a capacity which may be exercised consistently with the law, and the undersigned does not, therefore, think it necessary to recommend disallowance.

Chapter 184, intituled "An Act Respecting 'The Victorian Order of Nurses for Canada.'"

It is, in the opinion of the undersigned, questionable whether the local legislature may validly enlarge or affect the powers of this Order, which is incorporated by Royal Letters Patent with general powers.

The undersigned sees no objection, however, to leaving the Act to such operation as it may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

10 EDWARD VII, 1910

(Approved 10 March, 1911.)

DEPARTMENT OF JUSTICE, OTTAWA, 30th January, 1911.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the Tenth year of the reign of His late Majesty (1910), and received by the Secretary of State for Canada on 3rd November last.

Two of these statutes call for special comment,—

Chapter 136, intituled "An Act respecting the North Mountain Division of the Dominion Atlantic Railway."

This Act provides by the first section that the moneys payable for lands for track, station and terminal purposes of the North Mountain Division of the Dominion Atlantic Railway to be built in the Municipality of King's County shall form a charge upon the municipality, and may be assessed in the manner provided. This section and section 5, which is supplementary to it, are unobjectionable.

Sections 2, 3, 4 and 6, however, are intended to affect the power of the Company to take lands, to make the Nova Scotia Railways Act in some respects applicable, to provide a mode for assessing compensation or damages for the lands to be taken and to limit the time within which the railway is to be constructed.

The undersigned does not perceive how these provisions can be competent to the legislature seeing that the railway has been declared a work for the general advantage of Canada and is to be constructed under the powers conferred by Dominion statutes. He considers, therefore, that the attention of the Provincial Government should be directed to these enactments so that they may be repealed unless indeed satisfactory grounds may be stated upon which to found the authority of the legislature.

Chapter 162, intituled "An Act to amend and consolidate the Acts relating to The Pacific Whaling Company, Limited."

This Act incorporating persons, some of whom reside in Nova Scotia and others in British Columbia, as The Pacific Whaling Company with general powers to build and acquire vessels, hunt and capture seals, etc., appears to the undersigned *ultra vires* of the legislature as extending to extra-provincial objects, and the undersigned would consider the advisability of recommending disallowance were it not that the Act is a re-enactment of previous statutes which profess to confer all the questionable powers. The original Act of 1903 escaped comment. The amending Act, Chapter 159 of 1905, whereby the Company was authorized to have its head office at such place in the Dominion of Canada as the directors might determine was the subject of correspondence with the local Government, and in the result this section was repealed and re-enacted in the form of section 16 of the present Act.

Inasmuch as the effect of disallowance of the consolidated Act would probably be to revive the previous statutes thereby repealed, the undersigned considers that the said Act may remain for such operation as it may have.

The undersigned recommends that the Lieutenant Governor of Nova Scotia be asked to report specially as hereinbefore advised and within the time limited for disallowance with regard to sections 2, 3, 4 and 6 of the said Chapter 136, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor, for the information of his Government.

Humbly submitted,

A.B. AYLESWORTH,

Minister of Justice.

1 GEORGE V, 1911

(Approved 5 February, 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, 30th January, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of Nova Scotia, passed in the First year of His Majesty's reign (1911) and received by the Secretary of State for Canada on 20th July last, and he is of opinion that these statutes may be left to such operation as they may have with the exception of Chapter 145, intituled "An Act to amend Chapter 158, Acts of 1902, entitled 'An Act to Incorporate the Nova Scotia Fire Insurance Company'".

This statute provides amongst other things, by Section 11, that the Company shall have power to establish agencies for the transaction of its business in such places as the directors may from time to time deem proper, provided that the principal office of the said Company shall be in Halifax; and, by Section 30, that the Company may lend its funds upon real estate in Canada "or elsewhere where the Company is carrying on business."

These provisions seem necessarily to imply, if they do not purport to expressly authorize the Company to carry on its business outside of the Province of Nova Scotia.

The undersigned does not overlook the fact that the Company may have availed itself of the provisions of the Insurance Act, and may therefore have such powers as are bestowed by subsection 3 of section 3 thereof. If, however, it be competent to the parliament to enlarge the powers of this local company so as to enable it to transact the business of insurance throughout Canada, it is not on that account the less beyond the authority of the local legislature to do so.

Section 11, standing by itself, would doubtless be construed not to confer powers in excess of those which the legislature is authorized to confer; but section 30 points directly to the transaction of business foreign to the province and raises an implication which may affect the interpretation of other provisions of the Act.

The undersigned considers therefore that the concluding words of Section 30 "in Canada or elsewhere where the Company is carrying on business," should be repealed, and he recommends that inquiry be made of the Lieutenant Governor to ascertain whether his Government will promote and see to the enactment of the necessary legislation within the time limited for disallowance.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

2 GEORGE V, 1912

(Approved 26 March, 1913.)

DEPARTMENT OF JUSTICE, OTTAWA, 12th March, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the Second year of His Majesty's reign (1912) and received by the Secretary of State for Canada on 19th August last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 13, intituled "An Act to Amend and Consolidate the Acts Relating to Succession Duty."

Some of the provisions of this Act are of doubtful validity. Section 6 provides, among other things, that "debts and sums of money due and owing from persons in Nova Scotia to any deceased person at the time of his death, on obligation or other specialty, shall be property of the deceased situate in Nova Scotia without regard to the place where the obligation or specialty shall be at the time of the death of the deceased." And these debts are declared to be taxable property in Nova Scotia.

The legislature cannot, in the opinion of the undersigned, by its own declaration confer jurisdiction upon itself. The locality of property as between one province and another must be legally determined upon the facts of each case by the application of common law principles or by legislative authority other than that of a province. The undersigned considers that this particular provision is *ultra vires*, and he recommends that the local Government should be asked to consider the propriety of repealing it.

Chapter 15, intituled "An Act to Consolidate and Amend Chapter 127, Revised Statutes, 1900, entitled 'Of General Provisions Respecting Domestic and Foreign Companies'".

This Act is in some respects of questionable validity, but in view of the questions now standing for judgment in the Supreme Court affecting provincial jurisdiction in the matter of companies, the undersigned does not think it necessary to consider the objections specially.

Chapter 18, intituled "An Act respecting the Rights of Fishing in the Province of Nova Scotia."

The undersigned is submitting a separate report upon this Act.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

(NOTE:—The report of the Minister of Justice on Cap. 18 was referred back 12 April, 1913, and no subsequent report made.)

3 GEORGE V, 1913

(Approved 18 May, 1914)

OTTAWA, 11th May, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the Third year of His Majesty's reign (1913), and received by the Secretary of State for Canada on the 6th March, 1914; and he is of opinion that these statutes may be left to such operation as they may have subject to the following comments, except Chapter 6, intituled "An Act respecting the Oyster Fisheries of Nova Scotia," which is reserved for a separate report:

Chapter 154, intituled "An Act to amend Chapter 154, Acts of 1900, entitled 'An Act to Incorporate the Institute of Chartered Accountants of Nova Scotia.'"

This Act provides that no person shall be entitled to take or use the designation "Chartered Accountant," or the initials "F.C.A.," "A.C.A." or "C.A.," either alone or in combination with any other words, or any name, title or description, implying that he is a chartered accountant, or any name, title, initials or description implying that he is a certified accountant or an incorporated accountant, unless he is a member of the institute in good standing and registered as such.

Copy of a letter dated 28th March last from the Secretary of the British Institute of Chartered Accountants to the Under Secretary of State for the Colonies has been

referred to the undersigned. By this letter it objected that the effect of the statute will be to prevent any member of the British institute describing himself as a chartered accountant in Nova Scotia, and there is no provision for giving members of the British institute the right to join the local institute as has been done in all the other provinces in Canada. This is said to be a serious matter.

Upon reference of these objections to the Lieutenant Governor of Nova Scotia, he reports that his Government is of opinion that the objection that there is no provision for the admission of members of the British Institute is not well founded, and he states that the Act amended contains provisions for the admission to the Nova Scotia Institute of Chartered Accountants under rules and regulations and by-laws of the society, and that his Government is informed that the By-laws as they are at present contain provisions for the admission of English accountants without examination, and that the proposed amendment does not interfere with this.

The undersigned considers therefore that the Secretary of State for the Colonies should be informed in the sense of this despatch.

Chapter 168, intituled "An Act respecting the Dominion Trust Company."

It is recited that the Dominion Trust Company was incorporated by Act of the Parliament of Canada, Chapter 89 of 1912, and that it is desirous of the passing of an Act authorizing it to carry on its business and exercise its corporate powers in the Province of Nova Scotia. Upon these recitals various clauses are enacted conferring powers upon the company, and these provisions are, in the opinion of the undersigned, as already stated in other reports, objectionable, in so far as they profess to confer powers upon this company which Parliament has not already conferred. There can of course be no objection to the local legislature removing any impediment which may exist under the provincial laws to the execution of powers granted by Parliament, but the constitution of the company is within the exclusive authority of Parliament and cannot be enlarged or affected by local legislation. The undersigned considers, however, that any question which may arise with regard to this statute may be conveniently determined by the courts.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

Institute of Chartered Accountants

MOORGATE PLACE,
LONDON, E.C., 28th March, 1913.

SIR,—I beg to acknowledge the receipt of your letter of the 27th instant, transmitting for the information of the Institute, a copy of a Bill which has been introduced into the House of Assembly of Nova Scotia to amend Ch. 154 of the Acts of 1900, for which I am much obliged.

You will observe that the effect of the amendment will be to prevent any member of this Institute describing himself as a "Chartered Accountant" in that Province, and there is no provision for giving our members the right to join the local Institute as has been done in all other Provinces in Canada. This is a very serious matter, and I would ask your kind offices on our behalf, as the effect of it will apparently be that our members who have had the right granted to them from the Crown to describe themselves as "Chartered Accountants" will be debarred from doing so in Nova Scotia, unless they follow the course of studies and pass the examinations required by the local Institute, which it would be absurd to require from our members who belong to the first body of Accountants in the world and have passed its Examinations here.

I would add that admission to this Institute excepting after service under articles and after passing the usual Examinations must now be considered to be a thing of the past as no person can be admitted under these conditions without he was connected with the profession so long ago as 1879 and continuously since; no person, in fact, has been admitted without examination and service under articles during the last five years.

I am, etc.,

GEORGE COLVILLE,
Secretary.

The Under-Secretary of State,
Colonial Office,
London, S.W.

GOVERNMENT HOUSE, HALIFAX, N.S.,
26th April, 1913.

SIR,—I have the honour to acknowledge receipt of your despatch of the 17th inst., enclosing, for consideration of my Ministers, a Communication, from the British Institution of Chartered Accountants, concerning the effect on its members of a Bill which has been introduced into the Assembly of my Province entitled "An Act to incorporate the Institute of Chartered Accountants of Nova Scotia."

My Government is of opinion that the objection that no provision for admission of Members of the British Institute is not well founded.

The Act which it is proposed to amend contains provisions for the admission to the Nova Scotia Institute of other Accountants under rules and regulations and by-laws of the Society and the Government is informed that the by-laws as they are at present contain provisions for the admission of English Accountants without examination and the proposed Amendment does not interfere with this.

I have the honour to be,

Sir,

Your obedient servant,

JAMES D. MCGREGOR,
Lieut.-Governor.

The Under-Secretary of State,
Ottawa.

(Approved 5 June, 1914)

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1914.

To His Royal Highness the Governor General in Council:

The undersigned, referring to his report of 11th instant, with respect to the Statutes of Nova Scotia, 1913, has the honour to report that he reserved Chapter 6, entitled "An Act respecting the Oyster Fisheries of Nova Scotia," for further consideration, in view of its provisions affecting public harbours. It transpires, however, that there is an agreement between the Minister of Marine and Fisheries and the Provincial Secretary of Nova Scotia whereby it is stipulated that the Government of the Province may grant leases of "such areas of the sea coast, bays, inlets, harbours, creeks, rivers and estuaries of said Province as the Government of the said Province may consider suitable for the cultivation and production of oysters"; and presumably the said Chapter 6 is intended to provide necessary statutory authority for the local Government to execute the powers conferred by the agreement.

In the circumstances the undersigned does not consider that it is necessary to make any recommendation with regard to this statute, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

4 GEORGE V, 1914

(Approved 15 October, 1914.)

DEPARTMENT OF JUSTICE, CANADA,

OTTAWA, 2nd October, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia, passed in the fourth year of His Majesty's reign (1914), and received by the Secretary of State for Canada on 24th August last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 180, intituled "An Act to incorporate the Nova Scotia Tramways and Power Company, Limited."

This is a statute by which certain gentlemen therein named are incorporated under the name of the Nova Scotia Tramways and Power Company, Limited, with powers to construct, acquire, equip, maintain and operate tramways, to develop and supply power in the Province of Nova Scotia, and to acquire and undertake the business, property and liabilities of any person or corporation carrying on any business which the company is authorized to carry on, etc. The Powers conferred upon the company are very comprehensive, and they are described in Section 2 of the statute, extending over six pages. The capital of the company is fixed at \$6,000,000 with power to increase to an amount not exceeding \$10,000,000, and the company is empowered to issue bonds in amounts to be determined by the company. The company is moreover authorized to purchase the property and franchises of the Halifax Electric Tramway Company, Limited, subject to the contracts, liabilities, liens and incumbrances outstanding against the latter company.

It is provided by Section 8 that the head office of the company shall be at Halifax, or at such other place in Nova Scotia as may be fixed by by-law of the company, and that the annual general meeting of the shareholders, and all other meetings of the shareholders and directors shall be held at such times and at such places within or without the Province as may be fixed by or pursuant to the by-laws of the company.

There has been referred to the undersigned a petition from the City of Halifax to Your Royal Highness in Council praying for the disallowance of this Act for the reasons therein stated. The principal of these grounds may be extracted as follows:—

"9. . . . The powers conferred on the new company (sec. 2 clauses (o) to (s) to acquire the property and franchises of other companies or to guarantee their securities practically remove all limit to the operations of the company, and authorize the tying up of the franchises of the city to enterprises entirely unconnected with the city. These clauses are wide enough to authorize or attempt to authorize the acquisition of companies operating under charters from the Federal Legislature, thus indirectly enabling the company to engage in operations beyond the sphere of provincial legislation. Clause 8

expressly authorizes the holding of the annual meetings of the company outside of the province. The capitalization of the company is increased from a nominal amount to \$2,000,000 stock and an equal amount of bonds and an actual amount of \$1,400,000 and \$600,000 of bonds to a nominal amount of \$10,000,000 stock and an unlimited amount of bonds (see sec. 20).";

and the prayer of the petition is based upon the following reasons as stated:—

"1. Because it involves a gross breach of the contract by which the city entrusted the operation and control of its franchises to the existing company.

"2. Because the enormous capitalization is wholly unnecessary for any purpose except a speculative one at the expense of the city's interest.

"3. Because this enormous capitalization will effectually prevent all attempts to readjust the relations between the city and the company operating the civic franchises, or to revest the city with its franchises.

"4. Because under no circumstances is it proper to deal with the franchises of a city without its consent and against its protest.

"5. Because it is grossly improper to combine the operation of these franchises with many other objects wholly undefined, with which the city has no connection and over which it can have no control.

"6. Because the request of the representatives of the city for a plebescite was a just and proper one and should have been granted.

"7. Because the Act contains matters beyond the sphere of a Provincial Legislature.

"8. Because an Act practically confiscating the rights and assets of a city in defiance of the practically unanimous protest of its citizens is in the highest degree unjust and contrary to public policy."

Upon reference of this petition to the Attorney General of Nova Scotia he reports as follows:—

"The said Chapter 180 received, during its progress through the legislature, the careful examination of the Nova Scotia Government, in order that nothing might be enacted which could be considered beyond the powers of the Legislature or could be properly construed as an interference with rights previously acquired. As a result of this consideration and the careful examination of the statute since it has been passed by the Legislature, and in view of the petition presented, it is confidently submitted that the Act referred to does not give any undue or extravagant or improper powers to the incorporators and does not interfere with any vested rights of other persons or bodies corporate, and that it is entirely within the powers of the Nova Scotia legislature.

"With respect to the eight reasons alleged in section 16 of the petition for disallowance, I beg to make the following statements and observations:—

"(1) There was no contract between the city and the existing company which has not been respected. The franchises referred to were not entrusted by the city to the existing company; they had been dealt with by the Legislature of Nova Scotia on several occasions before 1895. In 1886 by Chapter 124 street railway franchises were granted to the Halifax City Railway Company, Limited. In 1889 by Chapter 135 and in 1890 by Chapter 193 and in 1891 by Chapter 153 the Nova Scotia Power Company, Limited, was granted similar franchises. In 1895 by Chapter 107 the Halifax Electric Tramways Limited, known as the existing company in the petition of the City of Halifax, was granted similar franchises on condition that the old company should be protected.

"(2) There is no 'enormous capitalization,' nor any capitalization fixed by the statute. The issue of shares, bonds or other securities must be made

under the authority of the Board of Commissioners of Public Utilities for the Province and the propriety of the issue of such shares, etc., must be established to the satisfaction of that Board before any valid issue can be made.

"(3) The relations of the city with the company so far as the public are affected, are subject to the jurisdiction of the Board of Commissioners of Public Utilities.

"(4) No such doctrine as that stated in the fourth reason has been recognized in this Province, nor is it reasonable or proper that any such doctrine should meet with recognition. The legislature has by many statutes dealt with the railway and lighting franchises of the various cities and towns within the Province.

"(5) The question suggested by this reason is entirely one of policy. The Nova Scotia Legislature, through its committees and during the passage of the Bill, heard at great length arguments along this line. It is thought by the Government of Nova Scotia to be highly desirable and useful to encourage the development of water powers throughout the Province, for the production of electric energy.

"(6) The question of a plebescite was one entirely for the legislature.

"(7) It is confidently submitted that the Act contains nothing which is *ultra vires* a provincial legislature.

"(8) The statement made in the eighth reason has no application whatever to said Chapter 180, since this is not such an Act and effects no infringement of any rights of the city and is believed to be in accordance with the best interests of the city and province generally.

"The City of Halifax, under the enactment in question, controls the railway and lighting business to as full an extent as it did under the terms of the charter of the Halifax Electric Tramways Company, Limited.

"I am directed to say generally respecting this application for disallowance that the Government of Nova Scotia submits that the Act is a fair and proper Act, within the powers of the Legislature, and thought to be highly in the public interest, and contains nothing which can be reasonably criticised on any principle governing the disallowance of provincial statutes, which has heretofore been laid down."

It appears that this statute was vigorously opposed in the legislature on the part of the city, and that its provisions were the subject of a very careful consideration. It was apparently thought by the legislature that the enactments of section 22 were adequate to protect the city in respect of its contract rights, revenues and the rates and fares which the company should be allowed to take. However, that may be, the undersigned cannot avoid the conclusion that the subject of this Act is a matter of local concern within the province and within the undoubted powers of the legislature, and it will be observed that the Attorney General states in effect that a governing motive of the legislation was the encouragement and development of water powers throughout the province for the production of electric energy. The power of disallowance, while in nowise constitutionally limited, cannot conveniently be invoked as a general means for the reconsideration of legislative measures. The reason for a practical limitation of the cases in which the Governor General can be advised to interfere have been frequently indicated throughout a long course of practice, and while the undersigned maintains that the injustice, inconvenience or inexpediency of a measure as affecting public or private interests in respect of matters within the jurisdiction of the legislatures may in exceptional cases afford justifiable ground for disallowance, he is not satisfied upon a careful review of the material before him that any of these conditions prevail in the present case.

As to the two points of *ultra vires* made by the petition the undersigned observes that the broad powers conferred by the statute to authorize the acquisition by the company of the business of other companies cannot, in his opinion, be interpreted to express an intention that the company shall acquire franchises which it would be incompetent to the legislature to grant, and if the Company should attempt to make use of the power for such a purpose it would be restrained by the courts in proper proceedings.

The undersigned does not approve the provision of section 8 authorizing the annual general meeting of shareholders, and other meetings of shareholders or directors, to be held outside the Province of Nova Scotia, and he recommends that the attention of the local government be directed to this clause, with a view to amendment. He observes, however, that the power to hold meetings outside the province is stated alternatively with the power to hold meetings within the province, and if the power to hold meeting outside be, as the undersigned is inclined to think it is, in excess of the authority of the legislature, it is a power plainly separable which could be denied by the courts without affecting the other provisions of the Act.

For these reasons the undersigned is unable to make any recommendation favourable to the granting of the prayer of the petitioners.

Chapter 182, intituled "An Act to amend Chapter 113, Acts of 1911, entitled 'An Act to Incorporate Canadian Tungsten Mines, Limited,' as amended"; and

Chapter 183, intituled "An Act to amend an Act of the present session entitled 'An Act to amend Chapter 113, Acts of 1911,' entitled 'An Act to incorporate the Canadian Tungsten Mines, Limited, as amended'";

are still under consideration and will form the subject of a separate report.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government, and to the Mayor of the City of Halifax.

Humbly submitted,

CHAS. J. DOHERTY,

To His Royal Highness the Governor General of Canada in Council:

The Petition of

Lewis Miller and Company, Limited, a body corporate, doing business at St. Margaret's Bay in the Province of Nova Scotia, and

Dominion Lumber Company, Limited, a body corporate, incorporated under the laws of the Province of Nova Scotia, and

James T. Thomson of the City and County of Halifax, Merchant, and W. A. Black of Halifax aforesaid, Merchant, and George W. C. Hensley of Halifax aforesaid, Merchant, and J. Norwood Duffus of Halifax aforesaid, Merchant, and H. R. Silver, of Halifax aforesaid, Merchant, and

The Indian River Fishing Club, an unincorporated association, and

Mrs. Mary Pope of St. Margaret's Bay in the County of Halifax, and

Mrs. Amelia Keans of St. Margaret's Bay aforesaid, and

Mrs. Eleanor Rankine of Chicago in the United States of America, and

William Rankine of St. Margaret's Bay aforesaid, and

Singleton Mason of St. Margaret's Bay aforesaid.

HUMBLY SHEWETH:

1. Lewis Miller and Company is a body corporate, incorporated under the laws of the United Kingdom. In 1903 Lewis Miller and Company, Limited, purchased from the Dominion Lumber Company, Limited, the St. Margaret's Bay Lumber property. Among the lands acquired were substantial interests on the North East River

including the lots of land described in sections 1 and 2 of chapter 182 of the Acts of 1914 (Case pages 1 and 2) and all the lands on the Indian River with the exception of a part of a lot held by the Halifax Power Company, Limited, under a lease (Case page 120) and the lands held by the members of the Indian River Fishing Club hereinafter referred to.

2. The Dominion Lumber Company, Limited, was incorporated under the provision of chapter 132 of the Acts of 1901. By chapter 163 of the Acts of 1902 its powers were extended to include the right to dam, divert and develop the Indian and North West Rivers for lumbering and water-power purposes. When the Dominion Lumber Company sold their landed interests to Lewis Miller and Company, Limited, the contract of sale included a stipulation to transfer all the stock of the Dominion Lumber Company to Lewis Miller and Company, Limited, and all of the stock of the Dominion Lumber Company, Limited, is held by Lewis Miller and Company, Limited, or its nominees.

3. James T. Thomson, W. A. Black, George W. C. Hensley, J. Norwood Duffus and H. R. Silver are all members of an unincorporated club called the Indian River Fishing Club. All of the lands on both sides of the Indian River below the south line of Lewis Miller and Company Limited's lands except those owned by James T. Thomson, Esquire, are held in trust for this club. The rest of the lands are owned by James T. Thomson and leased to this club.

4. Mrs. Mary Pope, Mrs. Amelia Keans, Mrs. Eleanor Rankine, William Rankine and Singleton Mason are owners of undivided shares of the real property formerly owned by the late Martin Mason. This real property includes lot (a) described in section 3 of chapter 182 of the Acts of 1914 (Case page 2) and lot (b) described in section 1 of chapter 183 of the Acts of 1914 (Case page 6) and also other lands sought to be expropriated by the Halifax Power Company, Limited.

5. In 1911 Canadian Tungsten Mines, Limited, was incorporated to develop some mining areas. Incidental expropriation powers were given to the company which had as an additional object the development of hydro electric power.

There was nothing to indicate an intention to use the Indian and North East Rivers and they were not covered by the Act. (Case pages 42-56.)

6. In the autumn of 1911 Rod McColl, C.E., S. M. Brookfield, Esquire, and their associates proposed to promote a company to develop the Indian and North East Rivers for hydro electric power. They entered into negotiations with Lewis Miller and Company, Limited, to purchase the Millers' water-power and riparian rights.

The Millers refused to sell at their price but demanded better terms. (Case pages 107 to 110.)

7. Thereupon Mr. McColl and his associates purchased the charter of Canadian Tungsten Mines, Limited, and had the company's name changed to Halifax Development Company, Limited, and one or two provisions altered by chapters 187, 188 of the Acts of 1912. (Case pages 54 and 55.)

This was all carried out without the knowledge of Lewis Miller and Company, Limited, and your other petitioners who had no intimation of any kind whatsoever that such legislation was being passed.

By chapter 173 of the Acts of 1913 the company's name was changed to Halifax Power Company, Limited. (Case page 56.)

8. Thereupon the Halifax Power Company, Limited, proceeded with expropriation proceedings to take lands belonging to petitioners on Indian and North East Rivers.

The proceedings to expropriate the Indian River lands were enjoined by order of Mr. Justice Ritchie (Case page 132) whose judgment was confirmed by the unanimous judgment of the Supreme Court of Nova Scotia in Thomson vs. Halifax Power Company (Case page 134).

The proceedings to expropriate the lands on North East River which are described in chapters 182 and 183 Acts of 1914 (Case pages 1-8) were carried on and on January 26th, 1914, an Order in Council expropriating the lands was passed.

Further proceedings under this expropriation were restrained by an interlocutory order in Dominion Lumber Company, Limited, versus Halifax Power Company, Limited, and finally enjoined by judgment in that action. (Case page 151.)

Thus by judgment of Mr. Justice Meagher in Miller vs. Halifax Power Company, by judgment of Mr. Justice Graham in Dominion Lumber Company versus Halifax Power Company and by the unanimous judgment of the Supreme Court of Nova Scotia in banco in the Thomson case it was decided that the Halifax Power Company was not authorized by its act of incorporation to carry out its proposed development or to proceed with said expropriation.

9. To avoid the effect of the judgments of the courts the Halifax Power Company had Bill 85 introduced in the Legislature of the Province of Nova Scotia (see case page 147). This Bill was opposed by the petitioners and it ultimately became chapters 182 and 183 of the Acts of 1914 (see case pages 1-8).

10. These statutes chapter 182 of the Acts of 1914 entitled "An Act to amend Chapter 113 of the Acts of 1911 entitled 'An Act to Incorporate Canadian Tungsten Mines, Limited,' as amended" (Case page 1) and chapter 183 of the Acts of 1914 entitled "An Act to Amend an Act of the Present Session entitled An Act to Amend chapter 113 of the Acts of 1911, entitled An Act to Incorporate Canadian Tungsten Mines, Limited, as Amended" (Case page 6) are unjust, confiscatory and *ultra vires* the Provincial Legislature and they should be disallowed for the following reasons:

(a) These acts are unjust and confiscatory because they interfere with and destroy the vested rights of Lewis Miller and Company, Limited, and of The Dominion Lumber Company, Limited.

By chapter 90 of the Acts of 1875 as amended by chapter 141 of the Acts of 1895 the Indian River is incorporated and the power to build dams and sluices and to improve the river for lumbering purposes is conferred upon the St. Margaret's Bay Lumber and Timber Driving Company. This franchise is now vested in Lewis Miller and Company, Limited (See case pages 23-25).

By chapter 101 of the Acts of 1896 the right to build dams and improve the Indian and North East Rivers was conferred upon Young Brothers Company, Limited, predecessors in title of Lewis Miller and Company, Limited (See case pages 25-31).

The Dominion Lumber Company, Limited, was granted similar rights by its acts of incorporation Chapter 132 of the Acts of 1901 chapter 163 of the Acts of 1902 (Case pages 31-41) which further vested in the company the right to dam, divert and develop these rivers for power purposes and to expropriate lands for such purposes, a right affirmed by the judgment of Mr. Justice Graham of the Supreme Court of Nova Scotia in the case The Dominion Lumber Company, Limited, versus Halifax Power Company, Limited (See case pages 151-153).

When chapter 182 of the Acts of 1914 was originally passed by the House of Assembly it contained a section protecting vested rights identical with amendment number (1) case page 9 or amendment number (5) case page 10. At the hearings in committee of the Legislative Council this clause was retained. It was not attacked by counsel for the Power Company and it was struck out after counsel had retired without argument and without notice.

(b) There has been want of good faith on the part of the purchasers of the original act incorporating Canadian Tungsten Mines, Limited, and the promoters of the amending legislation of 1912 and 1913.

The Tungsten Charter, chapter 113 of the Acts of 1911, (Case page 42) was purchased and amended in 1912 without notice to your petitioners and in particular without notice to Lewis Miller and Company, Limited, while the promoters were negotiating with Lewis Miller and Company for the purchase and development of its lands and water-powers. There was want of good faith on the part of the promoters

in acquiring the use of expropriation powers which were harsh and unconscionable and thus by the aid of legislation imposing upon your petitioners an undesirable contract divesting their proprietary rights without giving them the opportunity to be heard and without proper regard to due compensation.

(c) The Legislature has been partial in failing to pass reasonable amendments to these Acts identical with amendments passed by the legislature in the case of other Bills dealing with interference with vested rights under similar circumstances.

Compare the amendment to chapter 183 rejected by the legislature (Case page 9 No. (2)) with sections 19 (2) of the Canadian Provincial Power Company's charter. (Case page 161.)

(d) The expropriation powers given to the Halifax Power Company are under the circumstances harsh and unconscionable. The company owns no lands on the Indian River with the exception of a few rods near Little Indian Lake and its interests on the North East River were so inconsiderable that the grant of the expropriation powers contained in its act of incorporation and amending acts was and is unjust and unreasonable.

(e) The right of the petitioners in part determined by the Courts at the time the Acts were passed and in part pending for determination are not safeguarded.

In Thomson versus Halifax Power Company the Supreme Court of Nova Scotia in banco unanimously decided that the Halifax Power Company was not authorized by its charter to dam or divert the Indian or North East Rivers or to expropriate land for power purposes one of the *rationes decidendi* being that the franchise had already been granted (Case page 134).

In Dominion Lumber Company, Limited, versus Halifax Power Company, Limited, Mr. Justice Graham of the Supreme Court of Nova Scotia decided that the Dominion Lumber Company, Limited, has a prior franchise for the development of the Indian and North East Rivers for power purposes and that the Halifax Power Company was not authorized by its charter to carry out its proposed development which is inconsistent with the petitioners' rights.

The first two of these cases was decided before the Acts in question were passed.

The last was pending and judgment was not given until after the Acts were passed.

All amendments that would protect the rights of the petitioners as established by the courts were rejected.

(f) The proposed development of the Indian and North East Rivers will result in the destruction of valuable fisheries. The Indian River is the seat of a valuable salmon fishery. (See evidence of John Mason, Thomson vs. Halifax Power Company Case page 9).

The Halifax Power Company's development involves the drying up of both rivers completely thus involving the destruction of the fisheries in these rivers (See evidence of R. McColl, Manager of the Halifax Power Company, Limited, case page 115). Such fisheries cannot be destroyed or injuriously affected by a Provincial Statute. An Act seeking to do so is *ultra vires* and should be disallowed.

(g) The petitioners, Mrs. Mary Pope, Mrs. Amelia Keans, Mrs. Eleanor Rankine, William Rankine and Singleton Mason were owners of undivided interests in the lots described as lot No. (a) in section (3) of chapter 182 (Case page 2) and lot No. (b) in section (1) of chapter 183 of the Acts of 1914 (Case page 6). They were not personally served with notices of the expropriation or represented before Commissioner Cluney or before the Governor-in-Council. They were merely dealt with as unknown owners and T. W. Murphy, Esquire, was appointed by the Lieutenant Governor-in-Council to represent them and to act for them in the various expropriation proceedings although the Halifax Power Company well knew at the time of the initiation of the expropriation and at all times thereafter that they were entitled to shares in the lots in question. The confirmation of an expropriation carried on without notice to the persons entitled to the lands and without giving them the opportunity to be heard on the matter of damages is harsh and unconscionable.

The Halifax Power Company's project will cause serious damage and injury to your petitioners by depriving them of their lands and of valuable privileges and franchises to the prejudice of their proprietary and statutory rights and without due compensation.

Your petitioners therefore humbly pray that said statutes; to wit, chapters 182 and 183 of the Acts of 1914 be disallowed by His Royal Highness the Governor General of Canada-in-Council.

And your petitioners as in duty bound will ever pray, etc.

Dated at Halifax, Nova Scotia, this 2nd day of September, 1914.

On behalf of the petitioners above named by Harris, Henry, Rogers and Harris, their solicitors.

HALIFAX, Nov. 1st, 1914.

Hon. Attorney General,
Halifax, N.S.

Sir,—

In reply to the Petition of Lewis Miller & Company, Limited, for the disallowance of Caps. 182 and 183 of Acts of 1914, the Halifax Power Company, Limited, begs to make the following observations:

1. The contention on which the Petitioners rely is that even though the lands described in the grant were not lands reserved to the Indians under any treaty, yet the lands were granted to Philip Barnard Tamaugh and Solomon impressed with a trust for the Tribe Indians; in other words that the grant created a tract of land within the meaning of the words of the British North America Act, Sec. 91 (24) "Lands reserved for the Indians." It is necessary to examine the grant itself.

- (a) The terms of the grant are the same as those of other grants made at the time.
- (b) The words "Chief of the Tribe Indians" after the name "Philip Barnard," are nothing more than words of description. That this is the proper construction of these words is strengthened by the words of the habendum "Philip Barnard Solomon Tamaugh of said Tribe."
- (c) The conveying words of the grant are:
"Do give and grant unto," and the words of the Habendum are:
"To have and to hold the said parcel or tract of five hundred acres of land, and all and singular other premises hereby granted unto the said Philip Barnard and Solomon and Tamaugh of said tribe—their heirs and assigns forever in free and common socage."

There can be no doubt that these words conveyed to the grantees an estate in fee simple absolutely; and there is nothing in the habendum (where limitations on trust are invariably inserted) to indicate otherwise.

2. The grant was made subject to the performance of onerous conditions common to all grants.

- (a) A yearly rent was to be paid.
- (b) The grantees were within three years after the date of the grant for every fifty acres accounted plantable to clear and work three acres at least or clear and drain three acres of swamp or drain three acres of marsh.
- (c) The grantees were to put and keep upon every fifty acres thereof accounted barren three neat cattle.
- (d) In certain cases the grantees were to erect a house.

It is to be noted that the Crown might have escheated this grant; and it is submitted that the conditions on which this grant were made were to be performed

solely by the three grantees, their heirs and assigns. That this is the case is shown by the following proviso:

"Provided also that every three acres that shall be cleared and worked or cleared and drained as aforesaid shall be accounted a sufficient seeding cultivation and improvement to *save forever from forfeiture*, fifty acres of land in any part of the tract hereby granted."

3. That the estate of the Grantees was alienable is clear from the following proviso:

"And provided also and upon this further condition that if the land hereby given and granted to the said grantees and their heirs as aforesaid shall at any time or times hereafter come into the possession and tenure of any person or persons whatever, inhabitants of our said Province of Nova Scotia, either by virtue of any deed of sale, conveyance, *enfeoffment or exchange*, or by gift, inheritance, descent, devise or marriage, such person or persons being inhabitants as aforesaid shall within twelve months after his, her or their entry and possession of the same, take the oaths prescribed by law and make and subscribe the following declaration: "I.....do promise and declare that I will maintain and defend to the utmost of my power the authority of the King in his Parliament as the Supreme Legislature of this Province, before some one of the Magistrates of the said Province and such declaration and certificate of the magistrate that such oaths have been taken, being recorded in the Secretary's Office of the said Province, the person or persons so taking the oaths aforesaid and making and subscribing the said declaration, *shall be deemed the lawful possessor or possessors of the land hereby granted.*"

We have the honour to be,

Sir,

Your obedient servants,

McINNES, MELLISH & FULTON.

HALIFAX, November 1st, 1914.

Hon. Attorney General,
Halifax, N.S.

SIR,—In reply to the Petition of Lewis Miller and Company, Limited, The Dominion Lumber Company, Limited, James T. Thompson, W. A. Black, George W. C. Hensley, J. Norwood Duffus, H. R. Silver, The Indian River Fishing Club, Mrs. Mary Pope, Mrs. Amelia Keans, Mrs. Eleanor Rankine, William Rankine and Singleton Mason for the disallowance of Caps. 182 and 183 of the Acts of 1914, the Halifax Power Company, Limited, begs to make the following observations:—

1. The petitioners agree to rely on two grounds:—

- (a) That power had been conferred on The Dominion Lumber Company and on Lewis Miller & Company, Limited, and the St. Margaret's Bay Lumber Company to build dams and improve the Indian and North East Rivers and that the conferring of similar powers on the Halifax Power Company, Limited, was therefore *ultra vires*.
- (b) That the Local Legislature has attempted to regulate the fisheries and to exercise rights on the North East River that are other than proprietary rights.

2. As to the first contention.

- (a) Lewis Miller & Company have no special chartered privileges whatever on either of these rivers. The Company owns certain timber lands in the river basins of these rivers and have no other rights except such as are incidental to such ownership.

- (b) The Dominion Lumber Company, incorporated in 1901, as a lumber Company by Cap. 163 of the Acts of 1902, the Company was authorized to acquire lands for the "purposes and uses of the Company" by expropriation on petition to the Governor in Council. No such petition was ever made and the Company after operating one year, in the autumn of 1903 sold all its property and has since then ceased to do business or own any property in Nova Scotia or elsewhere. No exclusive rights of expropriation were ever granted this Company. Indeed the Legislature of Nova Scotia has granted since the year 1902 similar rights to other companies, notably to the Dartmouth and Cow Bay Electric Company, Limited, Statutes of Nova Scotia, 1911, Cap. 120, Section 27.
- (c) The Indian River was never incorporated as claimed. Certain owners in 1875 were given certain rights of damming, etc., under certain conditions Cap. 90 (1875). These conditions were never complied with and the rights never exercised. The Charter expires in 1915. The Company so incorporated was not a joint stock Company and the petitioners do not possess the rights which the incorporated body may have had. This body had no power of expropriation.
- (d) The Halifax Power Company has exercised its powers. No other Company has attempted to do so.

3. As to the second contention, it has been decided in the Fisheries case, 1898, Appeal Cases 700, that section 91 of B.N.A. Acts did not convey to the Dominion of Canada any proprietary rights in relation to fisheries. Under the present statute the local legislature purports to deal with the bed of the stream and the waters of the river, and the jurisdiction over property in these is exclusively within the competence of the local legislature.

The local legislature purported to deal exclusively with "Property and Civil Rights in the Province" and that is what the Act on its face deals with.

The statements in the Petition as to the means by which the Legislation was obtained and the lack of good faith in respect thereto are specifically denied.

The Session of the Legislature was a long one, commencing about the 20th of February and closing about the first of June. The Act was introduced during the first month of the session, and was not reported to the Committee of the Legislative Council until the end of the Session. During this time there were many hearings both before the Upper and Lower House and all the arguments set forth by the Petitioners were placed before the Committees of both Houses by their Counsel.

We have the honour to be, sir,

Your obedient servants,

McINNES, MELLISH & FULTON.

MEMORANDUM for the Deputy Minister of Justice re Nova Scotia Legislation, 1914, Chapters 182 and 183, Canadian Tungsten Mines, Ltd., and Halifax Power Company, Limited.

Referring now to the communication of the Deputy Attorney General of Nova Scotia under date of November 9th ult. covering memoranda from Messrs, McInnes, Mellish and Company, solicitors of the Halifax Power Company under date November 1st ult. the undersigned dealing first with the petition of Lewis Miller and Company, James T. Thomson and other land owners of the Indian River submits:

I

That the petitioners rely not only on the two points suggested by these solicitors but on the seven specific grounds set forth in paragraph 10 of the Petition and lettered respectively (a), (b), (c), (d), (e), (f) and (g).

Grounds (a), (d) and (e) may be regarded as an appeal to the Governor-in-Council to disallow the legislation as confiscatory.

Grounds (b) and (c) attack the good faith of the promoters in applying for the legislation without notice and during the pendency of negotiations and further in refusing amendments identical with amendments adopted by the Legislature in dealing with vested rights under analogous circumstances.

Ground (f) suggests that the Provincial Legislature cannot authorize the diversion of the water of the river and the consequent drying up thereof resulting necessarily in the destruction of a fishery.

Ground (g) suggests that in regard to the position of Mrs. Pope, Mrs. Keans and other proprietors whose lands were taken without notice and without opportunity to be heard the Legislature's confirmation of the expropriation constitutes an attack on ordinary rights of property so extreme that the power of disallowance—the only remedy open—should be exercised.

The undersigned proposes to deal with each of these groups of grounds very briefly and in doing so incidentally to reply to the suggestions of the Halifax Power Company's solicitors.

As to grounds (a), (d) and (e). It is to be noted that the solicitors avoid disclosure of the real facts as established in the Petitioner's printed case. They say "Lewis Miller and Company have no special chartered privileges whatever on either of these rivers. The company owns certain timber lands in the river basins of these rivers and have no other rights except such as are incidental to such ownership."

The real facts are (and they are not in dispute) that Lewis Miller and Company and their co-petitioners own *all* the lands on both sides of the Indian River (except a few rods the ownership of which has no bearing whatever on the issue) and the Power Company own on that river these few rods only: that Lewis Miller and Company are the proprietors of all the shares in the Dominion Lumber Company and therefore own its rights and franchises. The Dominion Lumber Company under their amendment (chapter 163, 1902) obtained the right "to stop or impair the natural flow of water in said streams" and generally to do everything requisite to develop the powers thereof. As the Miller Company controlled and continue to control the land ownership with these various special powers the occasion might never arise for the use of the incidental power of expropriation and such occasion had not arisen at the time the Tungsten Act was purchased by the promoters of the Halifax Power Company.

The solicitors further say that "no exclusive rights of expropriation were ever granted to this Company." Substantially however they are exclusive. It is little short of absurd to conceive of two Power Companies on a small stream such as the Indian River using the same water and the Power Company's own evidence is that they propose to take the right to use all and their whole proposal is based on the necessity of using all.

The judgment of the Supreme Court of Nova Scotia (Case p. 152) is conclusive as to this contention. It is as follows:

And it is further adjudged, declared and decreed, as follows:

- "(a) That the defendant company is not authorized by its acts of incorporation or otherwise to execute in respect to the Indian and North East Rivers its proposals as set forth in paragraph II of the statement of claim.
- "(b) That the plaintiff Dominion Lumber Company, Limited, under its acts of incorporation, Chapter 132 of the Acts of Nova Scotia for the year 1901, and Chapter 163 of the Acts of 1902, is empowered and authorized to dam and divert the waters of the Indian and North East Rivers for the purposes and the uses of that Company, and that the defendant Company is not entitled as against either of the plaintiffs to execute said proposals.
- "(c) That the plaintiff Dominion Lumber Company, Limited, is empowered and authorized by its said acts of incorporation to expropriate lands on and in

the vicinity of the said Indian and North East Rivers for the purposes aforesaid, and that the defendant Company is not entitled as against the plaintiffs to expropriate lands on said rivers for its said intended purposes.

“(d) That the plaintiff Dominion Lumber Company, Limited, has not been dissolved and that it retains its corporate existence, and all the franchises, powers and authorities vested in it by its said Acts of incorporation.”

The statement that the Legislature has granted since 1902 similar rights to others notably to the Dartmouth and Cow Bay Electric Company (Chapter 120, 1911) is altogether erroneous. The powers given to this Company must be read as impliedly excluding the right to go to the Indian and North East Rivers which had already been specifically set apart by the Legislature to the Dominion Lumber Company more especially by its Act of 1902 Chapter 163 and the Supreme Court so decides. (Case p. 141 at bottom of page.)

Compensation to the petitioners in respect of these rights is denied. (See case p. 7 sec. 28 (2).) “Whenever any damage shall have been caused to any *riparian proprietor* whose lands are affected, etc., etc.” This clause gives compensation only to the riparian land owner and only in respect of his lands. Petitioners asked for the amendment on page 9 of the case which provided as follows:—

“Whenever the property privileges or rights of any person, firm or corporation are damaged or injuriously affected by the exercise of any of the powers of the company, etc.”

This was refused. At the same session of the House, however, and in an Act dealing also with the development of water powers (see case p. 161), the very clause sought for by the petitioners was enacted. Under the Halifax Power Company's Acts as they stand Lewis Miller and Company and the Dominion Lumber Company are deprived of any opportunity to claim compensation for the loss of their privileges as a chartered company and even riparian proprietors can only claim actual land values and not for the deprivation of the additional rights which these land owners had by the Act of 1875 and their other Acts conferring special rights on these rivers.

The statement of the solicitors that the conditions of the Act chapter 90, 1875, were not complied with and the rights thereunder were never exercised has no real bearing on the issue but the statement itself is altogether incorrect. (See judgment Supreme Court Nova Scotia case pp. 140-141 particularly at the top of page 141.) The Act of 1875 extends the principle of riparian proprietorship as applied to the Indian River and these enlarged rights became vested in the petitioners Lewis Miller & Company as successors in title.

As to the solicitors' further statement that: “No other company has attempted to exercise its powers,” it is misleading.

As already has been pointed out, there was no necessity for the Dominion Lumber Company to exercise powers to expropriate. It had under control all the lands necessary to enable it to proceed with the development of its water powers.

If the Federal authority is at any time to exercise its right to disallow Provincial Legislation involving an unwarrantable attack on vested rights and that too without the usual safeguards as to compensation, the circumstances as shown in this case are it is submitted sufficiently extreme and unconscionable to demand interference.

As to grounds (b) and (c), the solicitors content themselves with a general denial of the allegations of want of good faith. They fail to meet the facts which are clearly disclosed in the petitioners' printed case and specifically referred to in the petition.

Messrs. Miller & Company refused to negotiate for the sale of their rights because as stated in the letter dated December 14th, 1911 (case p. 107), it was their intention to erect a pulp and paper mill on the Indian River and thus to utilize the powers granted to them by chapter 163 of the Acts 1902. When the negotiations ceased then without notice to the Millers and without any opportunity to have their position con-

sidered by the Legislature the promoters sought and obtained the expropriation powers granted for other purposes under the Act of 1911 and when the right to expropriate was obtained the Millers' rights are taken without compensation except as to the actual value of the "lands," thus excluding from consideration in the compensation the important rights which they own under the various Acts to which attention has been called.

As to ground (f), the petitioners fully realize that the Local Legislature has power to deal with the proprietary rights in relation to fisheries, but have they the power to deal with these rights to the extent of destroying them? Can the Legislature of a province pass laws authorizing the diversion and drying up of the river beds and thus destroy the fisheries?

As to ground (g), it is to be noted that the solicitors make no answer whatever to the serious allegations made that owners, known to the Power Company, were proceeded against and their lands expropriated without notice to them and without opportunity to be heard and that their interests could thus be taken and valued without their having the opportunity to appoint an arbitrator and without the opportunity to give evidence before the arbitrators appointed to assess the damages.

The petitioners Mrs. Todd, Mrs. Keans, Mrs. Rankine, William Rankine and Singleton Mason are placed in this extraordinary position by the confirmation of the Order in Council enacted by clause one of chapter 182 case p. 3. The only remedy for these people is disallowance.

II

Dealing secondly with the petition of Lewis Miller and Company, Limited, and the Dominion Lumber Company, Limited, based on the allegation that the Indian Grant, so called, is impressed with a trust for the Indians referred to in the grant and is therefore vested in the Federal authority the undersigned submit:—

1. That the grant shows on its face that the lands in question are to be regarded as "lands reserved for the Indians" under section 91 (24) of the British North America Act. Not only are the words "Chief of the Tribe Indians" used after the name of the first grantee but the Tribe is also referred to after the other two, thus showing conclusively the intention of the Crown in making the grant.

Of course the usual words of conveyance and the usual limitations are used as is always the case with regard to conveyances to trustees the title must always remain vested but the heirs take subject to the trust and likewise the assigns unless the alienation has been made under due authority. In this case it is submitted that alienation free of the trust could only have occurred before 1867 with the concurrence of the Provincial authority and after Confederation with the concurrence of the Dominion authority and in either case pursuant to legislation authorizing such alienation.

2. The suggestions made by the solicitors Messrs. McInnes, Mellish & Company do not it is submitted affect the case. The usual form of grant was used but the question really turns on the determination of the question as to whether these lands are lands reserved for the Indians.

If so, then the Local Legislature has no power to pass the Act complained of authorizing the diversion of the Indian River which traverses this grant and title to the bed of which passed by virtue of the grant, the river being non-navigable.

The plan accompanying the petitions will aid toward an understanding of the applicants' various contentions.

Respectfully submitted.

HARRIS, HENRY, ROGERS & HARRIS.

Halifax, December 17th, 1914.

DEPARTMENT OF THE NAVAL SERVICE,

OTTAWA, September 15, 1914.

Sir:—

Your letter of the 8th September addressed to the Deputy Minister of Marine and Fisheries, forwarding your file regarding Nova Scotia legislation, and asking for that Department's views with regard to the effect the proposed dams across the Indian and North West Rivers, Halifax County, built under the provisions of Chapters 182 and 183 of the Statutes of Nova Scotia, of 1914, will have on the fisheries of these rivers, has been transferred to this Department.

The only reference to the matter that appears on your file is in the petition of the Lewis Miller Company, Limited, to the Governor General. At page 8 of the petition it is stated that the proposed development in the Indian and North West Rivers will result in the destruction of valuable fisheries. The evidence of *John Mason,—Thomson vs. Halifax Power Company case, page 9,—is cited*, though such is not on the file.

While Indian River particularly is an important resort for salmon, this Department is not in a position to express any final opinion as to the effect the proposed development in these rivers will have on the fisheries until it is in possession of full information as to the nature of the development.

There is no question that the importance of any river from a fisheries standpoint, is seriously interfered with by the building of a dam or dams therein, even if such are provided with efficient fishways, as the general experience is that while, where conditions are favourable, a large number of fish will ascend beyond the dams through such fishways, all the fish will not do so.

I am returning your file herewith, and if you will be good enough to afford information as to just where the proposed dams are to be built in these rivers, with a full description of such dams, I shall be glad to furnish you with this Department's opinion as to their likely effect upon the fisheries on the rivers.

I am, Sir,

Your obedient servant,

G. J. DESBARATS,

Deputy Minister of the Naval Service.

The Deputy Minister,
Department of Justice,
Ottawa, Canada.

N.S. Legislation, 1914

DEPARTMENT OF JUSTICE,

OTTAWA, CAN., 22nd September, 1914.

Sir:

Referring to your letter of 15th instant, with regard to the proposed works upon Indian and North West Rivers in Halifax County, Nova Scotia, I have no information as to the character or effect of the works which are proposed beyond what is contained in the file which I sent you. The evidence of John Mason in the case of Thomson vs. Halifax Power Company, to which you refer, does not describe these works, but merely goes to show that Indian River is a salmon river.

The powers conferred upon the Company by the two statutes Chapters 182 and 183 of 1914 are, as you will observe, very broad, extending even to the diversion of the streams. I may say that I observe that under the Fisheries Act the Minister of Marine and Fisheries may require suitable fishways to be placed in any obstruction built in a river frequented by fish, but I am not aware that any other power has been taken to control such operations as these, and it is a question whether the importance of the

fisheries in these rivers is such as to require any further interference on the part of the Government. Possibly it is a matter in which your local officers could with advantage make some enquiries.

I have the honour to be,

Sir,

Your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Geo. J. Desbarats, Esq., C.E.,
Deputy Minister of the Naval Service,
Ottawa.

DEPARTMENT OF THE NAVAL SERVICE,
OTTAWA, November 6, 1914.

SIR,—I beg to again revert to your letter of the 22nd September ultimo, with regard to the effect the proposed damming of the Indian and North West Rivers in Halifax County would have on the fisheries.

The information now before the Department is, that it is proposed to build six dams on the North West River, and one dam twelve feet high about 7,000 feet from the mouth of the Indian River.

North West River is not very important from a fishery standpoint, as the fish naturally following the stronger current, go to the Indian River. The aggregate value of the salmon, alewives and trout fisheries from Lunenburg to Indian Harbour,—which largely depend on Indian River for spawning grounds,—is about \$1,200.

It is understood that the dam in the Indian River is to be a considerable distance above the power house, and it is to be connected with the power house by a pipe, and that all the water going beyond the dam would be conveyed through such pipe, so that the bed of the river below the dam would be dry except to the extent of the water that would come through a fishway, which would not likely be sufficient to enable the fish to ascend to the foot of the dam.

In the light of the above, there can be no doubt that the building of the dam there would be seriously detrimental to the fisheries.

I am, sir,

Your obedient servant,

G. J. DESBARATS,
Deputy Minister of the Naval Service.

The Deputy Minister,
Department of Justice,
Ottawa.

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1915.

DEAR MR. DESBARATS:

Referring to your letter of 6th November last, with regard to the proposed operations of the Halifax Power Company, which it appears as I understand your report would be likely to destroy the fisheries of Indian river, I am being urged by both Lewis Miller & Company, Ltd., and others who have petitioned for the disallowance of the legislation, and by the Halifax Power Company, which is of course supporting the legislation, to dispose speedily of the question of disallowance. It seems that the Power Company is anxious to proceed at once with its project of development. I am disposed to think that there is no ground upon which conformably with the practice the Minister could recommend disallowance, unless it be interference with the fisheries, and I should like to know as soon as possible whether the destruction of the

fisheries of the Indian River, which it seems is likely to ensue from the proposed works, is regarded by your department as a matter sufficiently serious to justify the exercise of the power of disallowance. I think it not unlikely, although questionable, that proceedings might lie in the court to restrain the exercise of the powers which the legislature has professed to confer upon the Power Company upon the ground that the diversion of the river would destroy valuable fisheries, but I do not think it would be advisable to rely upon this right if the Government wishes at all risks to protect this local fishery. I shall be glad therefore if you will communicate to me with the least possible delay the considered view of your department upon the subject, and I shall make that the basis of my report so far as the petitions involve a question relating to the fisheries.

Yours very truly,

G. J. Desbarats, Esq., C.E.,
Deputy Minister of Naval Affairs,
Ottawa.

E. L. NEWCOMBE,
D.M.J.

OFFICE OF THE DEPUTY SUPERINTENDENT GENERAL,

OTTAWA, March 17th, 1915.

DEAR MR. NEWCOMBE,—

I have before me your letter of the 11th March with attached papers, dealing with certain land at the mouth of Indian river, county of Halifax, Nova Scotia, which was set apart for certain Indians.

On reference to our papers the following information is found of record in a manuscript book entitled, "Nova Scotia Indian Affairs from November 1841 to June 1843."

"This plan is a faithful representation of two tracts of land set apart for Indians, they are marked A. was laid out to them many years ago, and afterwards granted to them. It is situated at the head of St. Margaret's Bay, in the County of Halifax, and commands a valuable Alewife fishery. It contains 500 acres. It has been sought after with avidity by the German settlers, and I believe they have succeeded in part in the purchase of this land from the Indians, and thus having acquired a right to the said, the Indians are at perpetual variance with them about this land and fishery. Had these lands been granted in trust solely and exclusively for the Indians, and not transferable, these differences, with others of a similar nature, at Malane Bay, Eel Brook, Pugwash and other parts of the province might have been avoided, and those valuable situations secured forever for the support of these people."

I enclose a tracing of a plan showing these 500 acres, copied from the above mentioned book.

It seems from this record that the land was not held in trust for the Indians, and that they had begun to part with it about 1820. When at Confederation the Nova Scotia authorities handed over to the Dominion all the lands held as Indian reserves in the Province, this allotment at the mouth of the Indian River, does not appear in the schedule, and it has never been known to the Department as an Indian reserve.

The papers are returned herewith.

Yours very truly,

DUNCAN C. SCOTT,
Deputy Superintendent General.

E. L. Newcombe, Esq., C.M.G., K.C.,
Deputy Minister of Justice,
Department of Justice,
Ottawa, Ont.

DEPARTMENT OF NAVAL SERVICE, DEPUTY MINISTER'S OFFICE

OTTAWA, March 30th, 1915.

DEAR MR. NEWCOMBE,—

I beg to revert to your letter of the 11th instant, in which you ask for the considered view of this Department as to whether the damming of Indian River, Halifax County, should be allowed, keeping in view the value of the fisheries in and dependent on the river, and the likelihood of their depletion should the proposed dam be built.

The matter has been receiving careful consideration; but as you will appreciate it is a very difficult one for this Department to give any final opinion upon, inasmuch as the Department is not in a position to know what would be the value to the public of the power that would result from the building of the proposed dam. I, therefore, do not see that this Department can do more than to indicate the value to the public of maintaining the fishery and allowing nothing to be done which would result in its diminution.

The value of the commercial salmon fishery, which is largely dependent upon the spawning grounds of Indian River is about \$1,200.00 annually; but over and above this, Indian River is one of the important sport fishing streams in the Province. The value of a sport fishery is impossible to indicate in money. It would have to be regarded not only from the standpoint of the money dispersed in the community by sportsmen, but from the exceedingly important standpoint of the amount of recreation, pleasure and health it affords to those who engage in such fishing.

This Department would much regret to see anything done, which would result in the depletion of the fishery dependent on this river.

Yours truly.

G. J. DESBARATS.

E. L. Newcombe,
Deputy Minister of Justice,
Ottawa, Canada.

(Approved 12 May, 1915)

DEPARTMENT OF JUSTICE

OTTAWA, April 30th, 1915.

TO HIS ROYAL HIGHNESS

THE GOVERNOR GENERAL IN COUNCIL:

The undersigned has had under consideration two statutes of the Legislature of Nova Scotia, passed in the fourth year of His Majesty's reign (1914), and received by the Secretary of State for Canada on the 24th day of August, 1914, in respect of which petitions for disallowance were received, viz:—

Chapter 182—intituled "An Act to amend Chapter 113, Acts of 1911, entitled, 'An Act to Incorporate Canadian Tungsten Mines, Limited', as amended"; and

Chapter 183—intituled "An Act to amend an Act of the present session entitled 'An Act to amend Chapter 113, Acts of 1911, entitled 'An Act to incorporate the Canadian Tungsten Mines, Limited, as amended'."

By Chapter 182 it is recited that the Halifax Power Company, Limited, applied by petition to the Governor-in-Council under Section 17 of Chapter 113 of the Acts of Nova Scotia, 1911, which was the incorporating Act of the Canadian Tungsten Mines, Limited, designating by metes and bounds certain lands, lakes or streams, or land covered with water, situate at or near North East River, St. Margaret's Bay, in the County of Halifax, which were required for the purposes of the Company. This application apparently was made with a view to the exercise of the powers of expropria-

tion conferred by the said Chapter 113, and it is recited that accordingly an Order-in-Council was made pursuant to the provisions of the last mentioned Act, whereby the Governor-in-Council ordered and declared that the said lands sought to be expropriated should be vested in the Company in fee simple free from encumbrances, subject to the payment of damages. Upon this narrative the said Chapter 182 proceeds to enact the confirmation of the said Order-in-Council, and that the lands therein described are vested in the Company subject to the payment of the damages. It is moreover enacted that section 17 of the said Chapter 113, which authorizes application to the Governor-in-Council for the expropriation of lands shall be read as if it had been made in terms applicable to the North East and Indian Rivers flowing into St. Margaret's Bay, and all rivers, lakes and streams tributary thereto, whether flutable for saw-logs or timber or not. A clause is added enabling the Company after the purchase or expropriation of these lands to divert or alter either temporarily or permanently the course or situation of any river, lake or stream, or the water coming or flowing over any such land, and to hold, retain or carry along the water of such river, lake or stream in a new bed or channel by sluices or otherwise; provided that the diversion or alteration is to take place upon or through lands acquired by the Company, or along, across or through any road or highway as may be necessary for the purposes of the company. Provision is made for the appointment by the Governor in Council of commissioners who may direct the Company to equip and maintain at its own costs sluices and other facilities for the transmission of logs or timber down such rivers as the commissioners deem fit, and to regulate the terms upon which these may be used or enjoyed as well as the scale of tolls to be taken. It is enacted that any person sustaining damage by failure of the Company to comply with any direction of the commissioners may recover damages from the Company, and there is an appeal from the commissioners to the Board of Commissioners of Public Utilities. The commissioners are also to determine questions which may arise respecting access to any river across any land acquired by the Company, and nothing contained in the Act is to be so construed as to deprive any party of costs in any part or pending action.

By Chapter 183 the said Chapter 182 is amended by inserting the description of another tract of land after the description of Lot A in paragraph 3 of the Order in Council recited in the preamble, which is erroneously described as the third section of the Act, and also by the introduction of further recitals intended to justify the proceedings of the Governor in Council. Then follows an amendment by the effect of which a section is substituted for the provisions of the said Chapter 182 enabling the Company to divert and alter rivers, lakes or streams, and by the amended section, which seems intended to enlarge the former powers, the Company is authorized to dam, pen back and withdraw the waters of Indian River and North East River, or either of them, and of any river, stream or lake acquired, and to hold back or carry along the water in a new bed or channel by sluices, flumes, conduit pipes, or otherwise within the lands of the Company or upon roads or highways. Damages to riparians caused by flooding are to be paid, and these, in the absence of agreement, are to be fixed by arbitrators to be appointed in manner prescribed.

Two petitions against this legislation have been referred for the consideration of the undersigned. The petition of Lewis Miller & Company, Limited, a body corporate doing business in St. Margaret's Bay, and of the Dominion Lumber Company, Limited, a body incorporated under the laws of Nova Scotia, sets out that Lewis Miller and Company, Limited, incorporated under the laws of the United Kingdom of Great Britain and Ireland, owns large areas of land on the Indian and North East Rivers, including a part of the lands described in the preamble of the said Chapter 182; that the Dominion Lumber Company, Limited, was incorporated by Chapter 182 of the Acts of Nova Scotia, 1901, and that by Chapter 163 of the Acts of the Province of 1902 an exclusive franchise to dam, divert and develop the Indian and North East Rivers for lumbering and water power purposes was conferred upon the Company, the stock of which is now held by Lewis Miller & Company, Limited, or its nominees;

that when the Canadian Tungsten Mines, Limited, was incorporated in 1911 and given expropriation powers there was nothing to indicate an intention to use the Indian and North East Rivers, and that these waters were not covered by the legislation; that in the Autumn of 1911 Rod McColl, C.E., and S. M. Brookfield, Esquire, and associates promoted a company to develop the Indian and North East Rivers for hydraulic power and purchased the franchise of the Canadian Tungsten Mines, Limited, the name of which was changed to the Halifax Development Company, Limited, by Chapters 187 and 188 of the Provincial Acts of 1912, and that by Chapter 173 of the Acts of 1913 the Company's name was again changed to Halifax Power Company, Limited; that the development of the Halifax Power Company project involved expropriation of lands on the Indian and North East Rivers, including the Indian grant, so-called; that the Halifax Power Company proceeded upon these powers to take lands belonging to the petitioners, and the expropriation proceedings were enjoined by the Supreme Court of Nova Scotia in judicial proceedings.

Then it is alleged by the petitioners that to avoid the effect of these restraining judgments the Halifax Power Company, Limited, promoted in the legislature a bill, opposed by the petitioners, which was enacted as to said Chapters 182 and 183.

It is said that the Indian grant is a tract of land at the mouth of the Indian River granted by the Crown to Philip Barnard, of the Tribe Indians at St. Margaret's Bay, and Solomon and Tawnaugh of the said tribe, their heirs and assigns, containing about five hundred acres; that the land was so granted in 1786 to the said grantees as trustees for the Tribe Indians; that the land was therefore affected with a trust and became land reserved for the said Indians. Therefore it is said that these lands are under the exclusive legislative authority of the Parliament of Canada.

It is shown that by Deed of 22nd April, 1800, Francis Solomon purported to convey away one-third interest in the Indian grant to James Croucher for the sum of £12; that by deed dated September 29th, 1817, Philip Barnard and wife purported to convey to George Mason a sixty acre lot for £60, part of the Indian grant; that by deed of 14th October, 1831, the heirs at law of Philip Barnard purported to convey to James Croucher and James Boutilier an undivided share of the Indian grant for £35, and that for the last sixty years or more the lands have been in the possession of the late Martin Mason and his heirs, who claimed title through the said grantees under the said deeds, and that their title as against that of the Halifax Power Company claiming under Indians said to be heirs of Tawnaugh, one of the grantees, and other alleged heirs, was established in the injunction proceedings. Therefore it is alleged that these statutes are *ultra vires* as attempting to vest part of the Indian grant in the Halifax Power Company, Limited, and to divest the Indian title, and because they purport to authorize the expropriation of lands covered by the Indian title. Accordingly the petitioners pray for disallowance upon three grounds: first, because the legislation is *ultra vires*; second, because it encroaches on and interferes with the jurisdiction of the Dominion Parliament over Indian lands; and third, because it specially injures the petitioners by voiding their franchises and expropriating their lands.

There is another petition in which the above named petitioners are joined with James T. Thomson, W. A. Black, George W. C. Hensley, J. Norwood Duffus and H. R. Silver, Merchants of Halifax; the Indian River Fishing Club, an unincorporated association; Mrs. Mary Pope and Mrs. Amelia Keans of St. Margaret's Bay, in the County of Halifax; Mrs. Eleanor Rankine of Chicago, and William Rankine and Singleton Mason of St. Margaret's Bay. This petition submits the following additional allegations: that the said James T. Thomson, W. A. Black, George W. C. Hensley, J. Norwood Duffus and H. R. Silver are all members of the Indian River Fishing Club, and that all the lands on both sides of the Indian River below the south line of the Lewis Miller Company's lands, except those owned by James T. Thomson, are held in trust for the club; that the rest of the lands are owned by James T. Thomson and leased by the club; that Mrs. Mary Pope, Mrs. Amelia Keans,

Mrs. Eleanor Rankine, William Rankine and Singleton Mason are owners of undivided shares of the real property formerly owned by the late Martin Mason, which included lands described in the said Chapter 183, and that it was unanimously decided by the Supreme Court of Nova Scotia in banco that the Halifax Power Company was not authorized by its Act of incorporation to carry out its proposed development or project of expropriation. It is therefore claimed by this petition that the said Chapters 182 and 183 are unjust, confiscatory and *ultra vires*, and should be disallowed upon the following grounds:—

- (a) These Acts are said to interfere with and destroy the vested rights of Lewis Miller and Company, Limited, and of the Dominion Lumber Company, Limited. It is stated that when the said Chapter 182 was originally passed by the House of Assembly it contained a section protecting vested rights, which was also retained by the Committee of the Legislative Council, but that this clause was attacked by counsel for the Power Company and struck out after counsel for the petitioners had retired, without argument and without notice.
- (b) It is said that there has been a lack of good faith on the part of the purchasers of the original Act incorporating the Canadian Tungsten Mines, Limited, and the promoters of the amending legislation of 1912 and 1913. It is claimed that the Miller Company did not have due notice of the proceedings of the promoters of the Power Company.
- (c) It is said that the legislature has been partial in failing to pass reasonable amendments corresponding with those adopted in other like cases.
- (d) The expropriation powers are said to be harsh and unconscionable, seeing that the Power Company owned no land on the Indian River, with the exception of a few rods, and that the interests of the Power Company on the North East River were inconsiderable.
- (e) It is urged that the petitioners' rights as adjudged by the courts are not safeguarded.
- (f) It is claimed also that the proposed development of the Indian and North East Rivers will result in the destruction of valuable fisheries.
- (g) Finally it is said that the petitioners, Mrs. Mary Pope, Mrs. Amelia Keans, Mrs. Eleanor Rankine, William Rankine and Singleton Mason, owners of undivided interests, were not personally served with notices of the expropriation proceedings or represented before the Committee, or before the Governor-in-Council; that they were merely dealt with as unknown owners represented by T. W. Murphy, who was appointed by the Lieutenant Governor in Council to represent them and to act for them in the various expropriation proceedings, although the Power Company well knew at the time that these people were entitled to shares in the property, and therefore that the confirmation of the expropriation is harsh and unconscionable. The allegations of the petition conclude with the statement that the Halifax Power Company's project will cause serious damage and injury by depriving the petitioners of their lands and franchises to the prejudice of their proprietary and statutory rights and without due compensation.

These petitions have been referred to the Department of the Naval Service and to the Attorney General of the Province for their observations. The Deputy Minister of the Naval Service reports that according to the information before his department it is proposed to build six dams on the North West River, and one dam twelve feet high about 7,000 feet from the mouth of Indian River; that North West River is not very important from a fishery standpoint, as the fish naturally following the stronger current, go to Indian River; that the aggregate value of the salmon, alewives and trout fisheries from Lunenburg to Indian Harbour, which largely depend on Indian River for spawning grounds, is about \$1,200.00; that it is understood that the dam in Indian River is to be a considerable distance above the power-house, to be connected

with the power-house by a pipe, and that all the water going beyond the dam would be conveyed through such pipe, so that the bed of the river below the dam would be dry except to the extent of the water that would come through a fishway, which would not likely be sufficient to enable the fish to ascend to the foot of the dam, and that there can be no doubt that the building of the dam there would be seriously detrimental to the fisheries.

The Attorney General apparently referred the petitions to the Solicitors of the Power Company, and he submits their replies with a statement that he has no observations to make other than those offered by the Solicitors. Their reply maintains that the Miller Company has no special chartered privileges on either of these rivers; that the Company owns certain timber lands in the river basins of these rivers and has no other rights except such as are incidental to such ownership; that although the Dominion Lumber Company was authorized to acquire lands for the purposes and uses of the Company by expropriation on petition to the Governor in Council, no such petition was ever made, and the Company, after operating one year, in the Autumn of 1903 sold all its property and has since then ceased to do business or own any property in Nova Scotia; that its rights of expropriation were not exclusive or in excess of those granted by the legislature to other companies; that the legislation in so far as it affects the fisheries is concerned only with proprietary rights; that there was no lack of good faith in regard to the legislation, and that the Indian grant, so-called, operated as a conveyance in fee simple to Barnard, Solomon and Tamaugh, and does not constitute an Indian reserve.

Copy of the reply of the Solicitors of the Power Company was sent to the petitioners' solicitors who have submitted a memorandum with their comments thereon. The objections to this legislation have thus been fully stated and discussed.

It would appear from the petitions that one objection to the legislation in question was the grant to the company of expropriation authority which had been denied by the Supreme Court of Nova Scotia. If however the amending statutes confer this power, which is no doubt a matter for legislative grant, there can now be no legal objection to the exercise of the power. If, on the other hand, the effect of the statutes be questioned, of course that is a matter which may be determined by the courts. As to the justice, propriety or expediency of the project of authorizing the Canadian Tungsten Mines, Limited, to expropriate, subject to the payment of damages, the property of individuals, or the property or franchises of another corporation subject to the jurisdiction of the province, that is a question, in the view of the undersigned, to be considered and determined by the local legislature. It would appear that there was a contest before the Committees of the two Houses, and that the parties, or some of them, were heard, although it is objected that they were not sufficiently heard, and that there was some surprise connected with the proceedings, but these are matters connected with the order and method of procedure in the provincial legislature which the undersigned does not feel justified to investigate or criticise. He is not disposed to think that it could have been intended by the legislature to treat the petitioners unfairly, and although they are dissatisfied with the legislation, the undersigned considers that the legislature was the constitutional tribunal to consider the proposals submitted, and that the principles of good legislation are not so far violated by the enactments resulting as to require the exercise of the power of disallowance with regard to legislation affecting purely local interests.

With respect to the claim that the area authorized to be expropriated includes part of an Indian Reserve, the undersigned has ascertained upon communication with the Department of Indian Affairs that it appears from the record that the so-called Indian grant, although granted to certain Indians, was not secured as a reserve for the benefit of any band, and that the grantees had begun to part with the property as early as 1820. Moreover the Deputy Superintendent General reports that when at Confederation the Nova Scotia authorities handed over to the Dominion all the lands held as Indian reserves in the province this allotment at the mouth of Indian River did not appear in the schedule and it has never been known to the department

as an Indian reserve. In these circumstances the undersigned is not satisfied that there was any Indian interest attaching to the lands which would exclude them from local legislative authority.

A more serious objection is that connected with the fisheries, as to which there has been some correspondence, and the undersigned would have hesitated to advise that these Acts might be left to their operation had it not been for an amendment passed at the recent session of the legislature whereby it is enacted that "nothing contained in Chapter 182 or 183 of the Acts of 1914 is intended to conflict with the fishery powers of the Dominion, and any diversion or obstruction of any river or stream under the authority of the said chapters shall be subject to all regulations made under the authority of the Government of Canada for the protection of the fisheries."

The undersigned accepts this enactment as evidence that there is no intention of conflict between the authorities of the Dominion and of the Province with respect to the diversion of the streams or interference with the fisheries, and he considers that Dominion interests are thereby sufficiently protected.

In these circumstances the undersigned does not consider that Your Royal Highness should be advised to exercise the power of disallowance, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government, and to Messrs. Harris, Henry, Rogers & Harris, the solicitors of the petitioners, and as well to Messrs. McInnes, Mellish, Fulton & Kenny, the solicitors of the company.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

DEPARTMENT OF JUSTICE, OTTAWA, CAN.

29th April, 1915.

Dear Mr. Desbarats;

Referring to your correspondence with respect to the local legislation providing for the diversion of Indian River and North East River in Nova Scotia, I may say that as a result of correspondence which I have had with the local authorities and the promoters of the legislation an amendment was enacted at the recent session of the legislature of Nova Scotia providing that nothing contained in Chapter 182 or 183 of the Acts of 1914 is intended to conflict with the fishery powers of the Dominion, and any diversion or obstruction of any river or stream under the authority of the said chapters shall be subject to all regulations made under the authority of the Government of Canada for the protection of the fisheries.

In these circumstances the Minister does not propose to recommend disallowance of the legislation.

Yours very truly,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Geo. J. Desbarats, Esq., C.E.,
Deputy Minister of Naval Affairs,
Ottawa.

5 GEORGE V., 1915

(Approved 22 June, 1916)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 15th June, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Nova Scotia for 1915; received by the Secretary of State for Canada on the 22nd July last, and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

6-7 GEORGE V, 1916

No approved report was made on the legislation of 1916 except the following report on chapter 22 of that year.

(Approved 11 October, 1916.)

DEPARTMENT OF JUSTICE, OTTAWA, 19th September, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration a statute of the Legislature of Nova Scotia, assented to on 17th May last, and received by the Secretary of State for Canada on the Eighteenth day of September, 1916, "An Act to amend Chapter 2, Acts of 1910, 'The Nova Scotia Temperance Act'".

This Act operates to extend the Nova Scotia Temperance Act to the City of Halifax. The Liquor License Act is repealed and it is enacted that all licenses issued under the provisions thereof shall immediately upon this Act coming into force become and be null and void and of no force and effect. The Act by its terms came into force on 30th June last.

A petition was presented to Your Royal Highness in Council for the disallowance of this Act on behalf of the Licensed Victuallers Association of the City of Halifax, and the undersigned has considered the petition, and has also upon special request heard Counsel for the petitioners and Counsel for the Nova Scotia Temperance Alliance in opposition.

It has been the practice under the legislation from time to time in force to issue licenses for the sale of liquor in the City of Halifax under municipal authority. These were annual licenses, and according to the most recent legislation the licenses expired in each year on 15th March. When the licenses for the year 1916-17 expired in March last they were renewed for another year in due course, and it is represented that the City of Halifax received license fees upon these renewals amounting to the sum of \$30,420, paid by the licensees, and that this sum has gone into the general revenues of the city. The petitioners complain of injustice in that by the legislation in question these licenses were terminated by the legislature as from 30th June last without any provision for refund of the license fees or a just proportion thereof, and without any compensation for the other pecuniary losses sustained by the petitioners in respect of their stocks in trade, loss of business, etc.

The petitioners contend moreover that the legislation is *ultra vires* of the province, because it is in excess of the only constitutional power to which it may be referred, viz:—Section 92, paragraph (9) of the British North America Act, 1867, “Shop, saloon, tavern, auctioneer, and other licenses in order to the raising of a revenue for provincial, local, or municipal purposes”. It is said, as the undersigned understands the case presented by the petitioners, that while provincial legislation may be enacted concerning shop, saloon and other licenses for the purposes of raising a revenue, the legislature has no power to legislate for the raising of license fees in respect of licenses which become by law ineffective for the purposes for which they were granted. It is difficult, however, to follow this argument, because it appears that the annual licenses which became effective in March last were at the time perfectly legal and conferred under the legislation then existing the rights, privileges or franchises which they purported to confer. The City of Halifax presumably, no more than the licensees, had any reason at the time to anticipate that the legislature would exercise its powers to nullify the licenses during the year; but the legislation when enacted nevertheless operated, as affecting property and civil rights or matters of a merely local or private nature in the province, to take away those rights, privileges or franchises which had been competently granted under the same legislative authority.

The question of compensation for the loss of business and the breaking up of the established trade of the licensees, is one peculiarly for the legislature, as to which the undersigned does not feel called upon to make any recommendation or suggestion, but it seems that the situation with regard to the license fees is very special, and that the legislative ethics or propriety of terminating these annual licenses abruptly at the expiration of three and a half months without providing for the return of the unearned fees which had been paid for them is at least doubtful enough to justify a recommendation for reconsideration by the legislature.

The application for disallowance must, however, fail in the opinion of the undersigned, because of the undoubted powers of the legislature to enact the statute of which the petitioners complain, and because of the principle which has uniformly found expression in connection with the exercise of the power of disallowance that it is not unless in very exceptional cases the part of this Government to review measures of competent provincial policy.

The undersigned has the honour to recommend that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Nova Scotia, for the information of his Government, and also that copies be sent to the Solicitors of the petitioners and of the Nova Scotia Temperance Alliance.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

7 GEORGE V, 1917

8 GEORGE V, 1918

Reports of Statutes for the years 1917 and 1918 for Nova Scotia approved by the Governor in Council contain no comments: The Statutes are left to such operation as they may have.

9-10 GEORGE V, 1919

(Approved 8 December, 1920)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 6th December, 1920.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Nova Scotia, passed at the session held in the 9th and 10th years of His Majesty's reign, 1919, and received by the Secretary of State for Canada on 12th December, 1919, and he is of the opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 5,—intituled "An Act respecting Water and Water Courses."

By Section 2 of this Act water course is defined to include "Every water course and the bed thereof and every source of water supply, whether the same usually contains water or not, and every stream, river, lake, pond, creek, spring, ravine, and gulch, but shall not include small rivulets or brooks unsuitable for milling, mechanical or power purposes." Section 3, and subsections 1 and 2 of Section 4, and Section 5 read as follows:—

"3. Notwithstanding any law of Nova Scotia, whether statutory or otherwise, or any grant, deed or transfer heretofore made, whether by the Crown or otherwise, or any possession, occupation, use, or obstruction of any water course, or any use of any water by any person for any time whatever, every water course and the sole and exclusive right to use, divert and appropriate any and all water at any time in any water course, is declared to be vested forever in the Crown in the right of the Province of Nova Scotia.

"4. (1) Where any person within two years from the passing of this Act establishes to the satisfaction of the Minister that any water course or any water, therein was at the time of the passing of this Act being lawfully used by him or that he was entitled to use the same, such person shall be entitled to be authorized by the Governor in Council to use such water course, and water therein, subject to such terms and conditions as the Governor in Council deems just.

"(2). Subject to the provisions of the next preceding subsection, save in respect to time, the Governor in Council, may authorize any person to use any water course and any water therein for such purposes and on such terms and conditions as are deemed proper.

"5. Possession, occupation, use or obstruction of any water course, or any water by any person for any time whatever after the passing of this Act shall not be deemed to give any estate, right, title or interest therein or thereto or in respect thereof to any person."

Vigorous objection is taken by Senator, the Honourable Lawrence G. Power, to Sections 3 and 5 above quoted. He states in a communication to the Minister of Justice of 28th November, 1919, referring to the provisions aforesaid, "The extracts given in the accompanying typewritten sheet show that this Act provides for the confiscation of private property in lands that have been for years held under perfectly valid titles. The gross injustice involved can be prevented only by the complete or partial disallowance of the provincial statute; because that statute does not appear to be *ultra vires* so as to be set aside by a court of justice. I cannot believe that your department will fail to take the steps necessary to prevent what must be regarded as a serious infringement of personal rights." And in a subsequent letter to the Deputy Minister of Justice, which is even more forcibly expressed, he observes:—"The Act does not affect me personally, but it is likely to seriously injure some of my country

neighbours, whose property held for over 80 years is proposed to be confiscated—i.e., taken from them without compensation.”

Upon reference of the correspondence to the Attorney General of Nova Scotia, Mr. Daniels, submits a memorandum in reply, copy of which is submitted herewith.

The Attorney General refers to Chapter 13 of 1918, “An Act respecting Water Power,” which was repealed by the Act in question, and by reference to that Act it will be observed that by Section 4, “every grant of Crown land heretofore made shall be construed and held, whether the same is so expressed therein or not, to have reserved to the Crown all water courses, and the beds of all water “courses.” It thus appears that the principle of confiscation of which Senator Power complains is embodied in the previous legislation, which perhaps would revive upon disallowance; but however that may be, the undersigned apprehends that legislation providing generally that water courses, although previously granted, are vested by force of the Act in the Crown for the public uses of the Province was competent to the provincial legislature; and although the divesting of private property for the public benefit without compensation is a strong measure, and one which in the view of the undersigned cannot be justified unless for very exceptional reasons, yet where, as in the present case, the statute enunciates a general rule of public policy applicable without exception to every provincial proprietor, and where, as also in the present case, the proprietors have not lodged any objection or protest on their own behalf, the solitary objector being Senator Power, who states that the Act does not affect him personally, the undersigned imagines that the Act cannot have been received with general disapproval, or at all events that it has not operated so prejudicially as to give rise to complaint by the private interests directly affected. There is a constitutional remedy for legislation of this character in the hands of the electors, who are largely composed of the proprietors whose rights have been taken away, and seeing that the Act is general in its operation, the undersigned considers that it may be appropriately left for reconsideration by the legislature in the event that the proprietors should manifest a desire for its repeal or modification.

Chapter 15, intituled, “An Act respecting Interest Judgment Debts.”

This statute provides that every judgment debt shall bear interest at the rate of 5 per cent per annum until it is satisfied, and there are some further provisions as to the method of calculation and a retroactive clause. The undersigned doubts the authority of the provincial legislature to enact this statute upon the ground that interest is one of the subjects committed to the exclusive legislative power of the Parliament of Canada, but the question is one which may be conveniently determined by the courts if it should arise.

Chapter 78, intituled “An Act to Amend Chapter 35, Acts of 1918, entitled ‘An Act to Amend Chapter 4, Acts of 1910,’ entitled ‘An Act to Amend and Consolidate the Acts relating to Crown Lands.’”

The undersigned submits herewith copy of a letter, dated 22nd March last, from Mr. F. L. Milner, K.C., of Amherst, in which he urges the disallowance of this statute as *ultra vires* and unjust upon the grounds therein set out. Mr. Milner’s letter was referred to the Attorney General of Nova Scotia, and copy of the Attorney General’s reply of 17th May last is also herewith submitted.

The complaint relates to Section 3 of the Act of 1919, whereby Section 23 of the Crown Lands Act, as enacted by Chapter 35 of 1918, is amended by striking out all the words between the word “land” in the first line and the word “shall” in the third line.

Section 23, as enacted by Chapter 35 of 1918, reads as follows:—

“Every grant of Crown Land made between the twenty-fourth day of March, 1858, and the thirteenth day of April, 1892, shall be construed and held, whether the same is so expressed or not, to have reserved to the Crown all the minerals in the land so granted, excepting only limestone plaster and building materials”;

and as amended by the Act under consideration the section therefore reads as follows:—

“Every grant of Crown Land shall be construed and held, whether the same is so expressed or not, to have reserved to the Crown all the minerals in the land so granted, excepting only limestone plaster and building materials.”

It will be perceived that Section 23, as enacted in 1918, had no operation except retroactively as affecting grants made between 24th March, 1858, and 30th April, 1892, and it would seem improbable that it was intended to make the provision generally retroactive by striking out the very words from which it derived its retroactive effect. It cannot be denied that Section 23 as now amended has its operation with regard to grants made after 17th May, 1919, the date upon which the Act in question received the royal assent; it is aptly expressed for that purpose, and in the opinion of the undersigned it cannot compatibly with the rules of interpretation apply to previous grants. “It is clear,” said Lord Blackburn in *Metropolitan Asylum District vs. Hill*, 6 Appeal Cases at page 208, “that the burthen lies on those who seek to establish that the legislature intended to take away the private rights of individuals, to shew that by express words, or by necessary implication, such an intention appears. There are no express words in this Act, and I think the weight of argument is rather against than in favour of such an implication.” In these circumstances the argument that the statute is unjust or confiscatory fails; and, upon the allegation of *ultra vires* the undersigned sees no reason to doubt the enacting authority of the legislature. If, however, as is urged by the complaint, the legislation be incompetent to the Province, the courts have jurisdiction so to declare, and the proprietors affected cannot therefore be without a remedy. Accordingly the undersigned does not recommend any action by Your Excellency in Council.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government; also that a copy of that portion of the report which relates to Chapter 5 be transmitted to Senator Power, and that a copy of that part of the report which relates to Chapter 78 be transmitted to Mr. Milner.

Humbly submitted.

H. GUTHRIE,

Acting Minister of Justice.

Enclosure.

DEPARTMENT OF JUSTICE, OTTAWA, 27th March, 1920.

SIR,—I enclose, for your information, copy of a letter received by the Minister of Justice from Mr. F. L. Milner, K.C., describing himself as solicitor of the owners of land in Malagash and Wallace who make title under grants issued before 1858, applying for disallowance of Chapter 78 of the Acts of Nova Scotia of 1919, entitled “An Act to amend Chapter 35, Acts of 1918, entitled ‘An Act to amend Chapter 4, Acts of 1910,’ entitled ‘An Act to amend and Consolidate the Acts relating to Crown Lands.’” The reasons upon which the application proceeds are set out in Mr. Milner’s letter, and I am to say that the Minister of Justice will be pleased to receive at your early convenience any observations which you desire to submit on behalf of your Government for his consideration in connection with his report upon this statute.

May I also direct your attention to my letter of 9th December last with regard to Chapter 5 of the Statutes of 1919 respecting Water and Water Courses, to which I have not yet received any reply.

I have the honour to be, Sir,

Your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Honourable

The Attorney General,
Halifax, N.S.

HALIFAX, N.S., May the Seventeenth, 1920.

E. L. NEWCOMBE, Esq.,
Deputy Minister of Justice,
Ottawa, Canada.

SIR,—I have the honour to acknowledge the receipt in due course of your letter of the 27th of March last, covering a copy of the letter of the 22nd ultimo to the Minister of Justice from Mr. F. L. Milner, K.C., of Amherst, applying as Solicitor of the owners of certain lands in Malagash and Wallace for disallowance of Chapter 76 of the Acts of Nova Scotia, 1919, entitled "An Act to Amend Chapter 35, Acts of 1918, entitled 'An Act to Amend and Consolidate the Acts relating to Crown Lands'." Disallowance is asked for on the ground that the Act is ultra vires of the Province and that it confiscates private property without providing for any compensation.

The precise effect of the Act is not clear to me, but in terms it repeals part of a section of the Crown Lands Act; assuming, however, that Mr. Milner has correctly stated the effect of the Act, I submit that it is clearly within the power of the Legislature to repeal in whole or in part any Act that it has passed, and that it is immaterial that the effect of such repeal is to confiscate property. Even if property were expressly confiscated by legislation instead of by the repeal of a statute, the Legislature would be of that class authorized by Clause 13, Property and Civil Rights in the Province, and Clause 16 Generally all matters of a merely local or private nature in the Province, of Section 92 of the British North America Act. What would be affected would be a right in property within the Province, and therefore those clauses would apply practically in terms.

If authority as to the validity of the Act be needed, I refer to *McGregor versus Esquimaux and Nanaimo Railway Company*, Law Reports 1907, Appeal Cases, page 462, in which the Judicial Committee of the Privy Council held to be constitutional an Act of the Legislature of British Columbia, the effect of which was to divest the respondent company of certain lands and minerals therein, which had previously been vested by the Province of British Columbia in the said Company's predecessor in title.

With regard to the ground that the Act should be disallowed it confiscates private property without providing compensation, I submit that the question of the justice or injustice of the propriety or impropriety of Provincial Legislation should rest entirely with the Provincial Legislature, which acts for and is directly responsible to the people of the Province.

Although the Dominion has the same technical right to disallow any Provincial Act as the Imperial authorities have to disallow any Dominion Act, for any or no reason, yet for many years it has been the established constitutional practice not to disallow Acts because the authority having jurisdiction to disallow took a view different from the Legislature that enacted the Statute, as to the justice or propriety of the Legislation, or because they were of the opinion that there was an interference with vested rights. As to the practice in Canada I need refer only to the report of the Minister of Justice, dated 20th of January, 1912, on the application for the disallowance of Chapter 9 of the Acts of Alberta for the year 1910.

I have the honour to be, Sir,

Your obedient servant,

O. T. DANIELS,
Attorney General.

Memorandum Respecting Nova Scotia Water Act, 1919

CHAPTER 5, ACTS OF 1919

There is no practical difference in principle between Chapter 5, Acts of 1919, and Chapter 13, Acts of 1918, which was repealed by the former Act, but it is submitted that the Act of 1919 is more favourable than the Act of 1918 to those who prior to the passing of the Act owned water courses. Section 6 of Chapter 13 of the Acts of 1918 saved the rights only of those who established that the grantee or person claiming under or through him had previous to the passing of the Act developed a water power, or used water for other purposes when he had a legal right to the same, but even then such persons might have been required to develop the power to the fullest possible extent, or make other use of the water. It is true that the Act of 1919 vests the legal title of all water courses in the Crown, but it is submitted that subsection (1) of Section 4 protects the former owner better than Section 6 of Chapter 13 of the Acts of 1918 did, and that the result is that the former owner is deprived merely of the bare legal title to the water course, as under the Act of 1919 his right to use the water was subject to be regulated. The situation in this Province with regard to water-powers was such that it was almost impossible properly to develop them without some such legislation as the Nova Scotia Water Power Act. Riparian owners who in many cases were not using, and did not purpose using the water, were in a position seriously to hamper, if not prevent, the development of water power. The present Act was designed to prevent the development of water power being obstructed, but at the same time to give to riparian owners such use of the water as they might be fairly entitled to. In practice, the Act worked well, and the riparian owners are beginning to realize that they have not been really injuriously affected, but have rather been benefited by other riparian owners on the same stream being prevented from unreasonably obstructing them.

It should be noted that the Act merely vests the water course in the Crown, and not the banks of the water course, so that in the great majority of cases the riparian proprietor is bound to receive consideration since access to the water course cannot be had or structures built to use the water or the water course without using the banks of the water course.

Dated at Halifax, N.S., May 17, 1920.

O. T. DANIELS,
Attorney General of Nova Scotia.

10-11 GEORGE V, 1920

(Approved 17 September, 1921.)

DEPARTMENT OF JUSTICE, CANADA,
OTTAWA, 8th September, 1921.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of Nova Scotia, passed in the Tenth and Eleventh years of His Majesty's reign, 1920, and received by the Secretary of State for Canada on the 26th day of November, 1920, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted.

H. GUTHRIE,
Acting Minister of Justice.

NEW BRUNSWICK

59th VICTORIA, 1896

1ST SESSION—2ND LEGISLATIVE ASSEMBLY

(Approved 22 December, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 11th December, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts of the Province of New Brunswick, passed in the 59th year of Her Majesty's reign (1896), assented to on the 20th day of March, 1896, received by the Secretary of State for Canada on the 2nd day of July, 1896, and he is of opinion that, with the exception of Chapters 5, 8, 42, 44, 96 and 106, all the said Statutes may be left to their operation without comment.

The six excepted Chapters, viz., 5, 8, 42, 44, 96 and 106 will be reported upon separately.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

(Approved 24 December, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 17th December, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the following Statutes of the Province of New Brunswick, passed in the 59th year of Her Majesty's reign (1896), assented to on the 20th day of March, 1896, and received by the Secretary of State for Canada on the 2nd day of July, 1896.

Chapter 5. "An Act to consolidate and amend the law respecting the sale of intoxicating liquors."

Upon further consideration of this Statute the undersigned does not consider any comment necessary. It may be left to its operation.

Chapter 42. "An Act to consolidate and amend the Acts to provide for the payment of Succession Duties in certain cases."

This Act, as its title indicates, provides for the payment of Succession Duties.

Section 4 exempts from the operation of the Act estates not exceeding in value \$5,000, property given for religious, charitable or educational purposes, and property passing to certain relatives of the deceased therein mentioned where the aggregate value of the property of the deceased does not exceed \$50,000.

The first paragraph of Section 5 is as follows:—

“Save as aforesaid all property, whether situate in this Province or elsewhere other than property being in the United Kingdom of Great Britain and Ireland, and subject to duty, whether the deceased person owning or entitled thereto had a fixed place of abode in or without this Province at the time of his death, passing either by will or intestacy, or any interest therein or income therefrom, which shall be voluntarily transferred in contemplation of the death of the grantor or bargainer, or made or intended to take effect, in possession or enjoyment after his death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled, in possession or expectancy, to any property or the income thereof which shall have been or shall be voluntarily transferred, or transferred without adequate consideration, for the purpose of evading the payment of Succession Duty to the Crown, or any transfer the effect of which shall have been or shall be to enable the transferee to escape payment of duty to the Crown, shall be subject to a Succession Duty, to be paid for the use of the Province over and above the fees provided by Chapter 52 of the Consolidated Statutes, or any Acts in amendment thereof or in addition thereto as follows:—”

Then follows a statement of the rates of duty which shall be paid, varying according to the value of the property and the manner of its disposition.

The undersigned is unable to construe that part of Section 5 above quoted otherwise than as including authority to tax property situate outside of the Province and belonging to deceased persons having no fixed place of abode within the Province. The provision seems to be general enough to include, and seems to be so expressed, as to comprise property of any deceased person passing in the manner therein mentioned other than property being in the United Kingdom of Great Britain and Ireland, wherever such property may be situate and wherever such deceased person may have had his abode at the time of his death, and it is not limited so as to apply, in case of property situate beyond the Province, of deceased persons who did not reside within the Province, to such portions of the property as might pass to persons residing within the Province.

Although the section is so expressed as to have the construction above stated, the undersigned does not consider that the Legislature could have intended to tax property over which it had no control, and the Undersigned, therefore, recommends that the attention of the Legislature be called to the enactment so that at its next Session a proper amendment may be made limiting the application of the section to property which it is within the authority of the Legislature to tax.

Chapter 44. “An Act to provide for the incorporation of Towns.”

By Section 64 the town council is authorized to make by-laws for certain specified purposes including the following:—

“14th.—To regulate the anchorage, wharfage, lading and unlading of vessels and other craft arriving at the town;

“22nd.—To restrain or repress gambling houses, or to enter into them and seize and destroy *rouge et noir* roulette tables and other devices for gambling;

“23rd.—To restrain and punish all vagrants, drunkards, mendicants and street beggars.”

These provisions although they may admit of a construction under which they would be within the authority of the Legislature, are nevertheless expressed in terms general enough, as apparently to authorize by-laws, power to make which could not be conferred by a Provincial Legislature. They appear to relate strictly to navigation and shipping, criminal law and other subjects of Dominion legislation, but it is difficult to say that they may not include some authority which could be granted by a Provincial Legislature. Thus, as to No. 14, it may be competent for provincial

authorities, as a matter of municipal or police regulation, to impose some restrictions as to the loading and unloading of vessels; for example, that oil or explosives should not be handled except during the day time or subject to certain regulations for ensuring safety. As to 22, the local authorities might prevent the establishment of gambling houses, although they could not impose a penalty for keeping a gambling house, that matter being already governed by the Criminal Code. See Sections 196 *et seq.* Section 23 may apply to other persons than those defined in Section 207 of the Criminal Code, and may also authorize the restrain of such as are likely to commit offences.

The undersigned considers it sufficient to point out that the authority by these clauses delegated to town councils cannot be legally acted on so as to authorize by-laws affecting matters which have been committed to the exclusive legislative authority of Parliament.

Section 106 provides in effect that any person who shall resist a Police Officer in the execution of his duty shall incur a penalty of \$80. The authority of this section is questionable as relating to the subject of criminal law, and because it establishes a penalty for an offence under the Criminal Code of Canada for which a penalty is also provided by the Code. Section 263.

Certain provisions of Section 109 are open to the same objection.

It does not appear to the undersigned, however, that the Statute should upon any of these grounds be disallowed. It would be open to any person affected by those provisions to test their validity in the courts where such questions could be conveniently decided.

Chapter 96. "An Act to continue a boom across the Jacquette River, and to incorporate a Company for the purpose."

Section 3 authorizes the Company to build and maintain a boom across the Jacquette River near the mouth thereof, and also piers and side booms for the purpose of stopping and collecting logs which may float down the river.

Chapter 106. "An Act to incorporate the Sussex Water and Electric Company."

Section 16 empowers the Company to acquire water powers and to construct and to maintain any dam or dams across any stream or river flowing in or through the County of Kings.

The provisions referred to are questionable from a Dominion point of view for reasons which have been frequently stated, and for which the undersigned begs to refer to the approved reports upon certain previous Statutes of the Province of New Brunswick of Sir Charles Hibbert Tupper, when Minister of Justice, bearing date 7th January, 1895, and 24th October, 1895. (Dominion and Provincial Legislation, 1867-95, pp. 764 and 766. See also pp. 244, 635, 645, 1146-7, 1149-50 and 1152.)

The existence of unconstitutional provisions in the Provincial Statute Books is apt to mislead and thereby cause trouble, but the danger of this consequence varies according to the nature of the objectionable provisions.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government, and that as to Chapter 42 herein mentioned, the Lieutenant Governor be requested to inform Your Excellency's Government whether the desired amendment will be made within the time limited for disallowance.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

NEW BRUNSWICK

(Approved 22 December, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 17th December, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon Chapter Eight (8) of the Statutes of the Province of New Brunswick, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 20th day of March, 1896, and received by the Secretary of State for Canada on the 2nd day of July, 1896.

Chapter 8. "An Act to revive and codify an Act to provide for the division of the Province into counties, towns and parishes." The first section of this Statute purports to enact what shall be the line of division between the Provinces of New Brunswick and Nova Scotia.

The Legislature of New Brunswick has no authority either to establish, vary or declare the boundary line between that Province and the Province adjoining. The undersigned assumes, therefore, that the provision in question is intended merely to be declaratory, but it does not correspond in terms with the description in the commission to Governor Carleton as set out in 3 Cartwright's cases, p. 572. It would seem proper to direct the attention of the Lieutenant Governors of Nova Scotia and New Brunswick to this Statute in order that they may submit for the consideration of Your Excellency's Government such observations as they may think proper, and in the meantime that the undersigned should defer further observations.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governors of Nova Scotia and New Brunswick for the information of their Governments.

Respectfully submitted,

O. MOWAT,

*Minister of Justice.**(Approved 13 July, 1897)*

DEPARTMENT OF JUSTICE, OTTAWA, 24th June, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to refer to his report to Council, approved on the 24th December, 1896, relating to certain Acts of the Legislature of the Province of New Brunswick, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on 20th day of March, 1896, and received by the Secretary of State for Canada on 2nd day of July, 1896, and particularly to that portion of the report which concerns—

Chapter 42.—"An Act to consolidate and amend the Acts to provide for the payment of Succession Duties in certain cases."

It is stated in the report that the Act purports to authorize the taxation of property over which the Legislature has no control, and the undersigned recommended that the attention of the Legislature should be called to the enactment, so that a proper amendment might be made limiting the application of the Statute to property which is within the authority of the Legislature to tax.

The Lieutenant Governor of the Province was also requested to inform Your Excellency's Government whether the suggested amendment would be made within the time limited for disallowance.

The undersigned has now received from the Attorney General of the Province a copy of a Statute passed at the last Session of the Legislature (60th Victoria, Chapter 36), intituled "An Act in amendment of 'The Succession Duty Act, 1896,'" by Section 2 of which it is provided that Section 5 of the said Chapter 42 is amended by adding at the end thereof the following paragraph:—

"(a.) The provisions of this section are not intended to apply, and shall not apply to property outside this Province, owned at the time of his death by a person not then having a place of residence within the Province, except so much thereof as may be devised or transferred to a person or persons residing within the Province."

The undersigned considers that the amendment so made complies only partially with his recommendation, and is not broad enough to relieve the original Act of the imputation of extra territorial effect. The limitation made by the amendment relates only to property outside the Province owned at the time of his death by a person not then having a place of residence within the Province, and to so much of such property only as may be devised or transferred to a person or persons residing within the Province.

It seems to the undersigned that the amendment should have provided in effect that the provisions of Section 5 should not apply to any property situate outside the Province, except in so far as such property might be brought into the Province for the purpose of administration or distribution, or for the purpose of payment or satisfaction of any bequest to a legatee domiciled within the Province, and it would, in the opinion of the undersigned, be necessary to so limit the general provisions of Section 5 in order to bring them within the authority of the Legislature. It is a question for the Legislature as to whether as a matter of justice it should not be provided that property situate outside of the Province which had already paid succession duties in the place where it was situate should not under this Act be held liable to taxation, except where the tax levied in the outside jurisdiction was less than that imposed under this Statute, and then only to the extent of the difference.

While, therefore, the amending Act fails to meet the views of the undersigned as to what is necessary, the undersigned regards the amendment as evidence of an intention on the part of the Legislature not to exceed its powers. It has also been represented to the undersigned that if the present amendment be considered insufficient by Your Excellency a further limitation will be enacted at the next Session of the Legislature removing the defects of the present amendment to which the undersigned has called attention.

In view of these circumstances, and having regard to the serious inconvenience and loss which disallowance of the Act might cause to the Province, the undersigned considers that the Act should not be disallowed, although no further amendment can be made within the time for disallowance.

The undersigned is further induced to refrain from recommending the disallowance of the Act, because the objections to which he has referred, in so far as they relate to the question of the authority of the Legislature, are objections which could be considered judicially, and because the Courts would be bound in the construction of the Act to reject any interpretation which would have the effect of taxing property beyond the jurisdiction of the Legislature.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60th VICTORIA, 1897

2ND SESSION—2ND LEGISLATIVE ASSEMBLY

(Approved 15 November, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of New Brunswick, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 18th June, 1897, and he has the honour to report that these Statutes may be left to their operation without any remarks, with the exception of the following which seem to call for some observations.

Chapter 5. "An Act to provide fishing facilities for Provincial and other Sportsmen, and for the re-stocking with fish of certain Lakes and Waters of the Province."

Chapter 20. "An Act to amend Part VI of Chapter 115 of the Consolidated Statutes, relating to Sewers and Marsh Lands."

Chapter 83. "An Act to incorporate the Upper South-west Miramichi Log Driving Company."

Chapter 93. "An Act to incorporate the Chatham Water Company."

Chapter 94. "An Act to consolidate, continue and amend the several Acts relating to the North-west Boom Company."

Chapter 95. "An Act to authorize the Town Council of the Town of Chatham to provide a system of Water Works for said town."

These Statutes contain provisions with reference to fisheries or affecting rivers or other waters which, for reasons stated in reports upon previous enactments of the same character, are not, in the view urged on behalf of Your Excellency's Government, within the legislative jurisdiction of the Province.

The undersigned does not consider, however, that any action should at present be taken with regard to these Acts.

Chapter 24. "An Act to consolidate and amend the law relating to the Supreme Court."

Section 25 reads as follows:—"Section Two of the Act of Assembly sixth William IV., Chapter Fourteen, is unrepealed, which section is as follows:—

"The sole liberty of printing and reprinting and publishing such reports shall be, and the same is hereby vested in and secured to the author and compiler thereof, his heirs and assigns, and if any person shall print, reprint or publish any such reports without the consent of the author and compiler or proprietor thereof, he shall be liable to an action on the case at the suit of such proprietor, in which action such proprietor shall recover double the damages he may have sustained by any such infringement of the copyright hereby secured to him."

The undersigned observes that the subject of copyright being within the exclusive legislative authority of the Parliament of Canada, and being governed by Canadian legislation already enacted, it is *ultra vires* of the Provincial Legislature to confer or declare any rights of copy. If, as is stated in the section quoted, Section Two of the Act of Assembly of Sixth William IV. be still unrepealed, it doubtless remains in effect so far as not inconsistent with the legislation of the Dominion, but in so far as it may have been repealed either expressly or impliedly by subsequent legislation it cannot be revived by a Provincial enactment declaring that it is unrepealed.

Subject to these remarks the undersigned considers that this Statute should be left to its operation.

Chapter 28. "An Act to consolidate and amend the law relating to County Courts."

Section 94 purports to give the several County Courts within the Province jurisdiction in criminal matters. The jurisdiction so stated to be conferred is the same, however, as that provided for the County Courts of New Brunswick, under the Criminal Code, 1892, and the undersigned considers the section referred to as merely intending to declare the jurisdiction already vested in the County Courts under Dominion legislation, and not as intended to legislate inconsistently, or to confer any new or different authority.

Chapter 29. "An Act in further amendment of the Law of Evidence, in relation to the evidence of Husband and Wife."

This Chapter provides in effect that the disability heretofore existing of any husband or wife to give evidence for or against each other in any civil proceeding instituted in consequence of adultery is removed, and that the husband and wife shall hereafter be competent to give evidence for or against each other on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or proceeding in the Court of Divorce and Matrimonial Causes, or in any other court of justice, or before any person authorized to take evidence. This provision in so far as it intends to make the evidence of the husband and wife admissible in proceedings for divorce is in the opinion of the undersigned *ultra vires*, the subject of divorce being one of the enumerated subjects in Section 91 of the British North America Act, and the rules of evidence by which the right to divorce is to be established appertaining strictly to the subject of divorce. The objection stated, however, is one to which the Courts may give effect, and as there is room for the operation of the Act in matters within the competence of the Provincial Legislature, the undersigned does not consider that it should be disallowed.

Chapter 36. "An Act in amendment of 'The Succession Duty Act, 1896.'"

The undersigned in recommending that this Act be left to its operation refers to his former report to Your Excellency with regard thereto, approved on 13th July, 1897, from which it appears that the undersigned has received assurance that a further amendment to "The Succession Duty Act, 1896," will be made in order to comply with his former recommendation. The undersigned anticipates that such further amendment will be made at the next Session of the Legislature.

Chapter 65. "An Act to amend 30th Victoria, Chapter 28, intituled 'An Act to authorize the City Council of the City of Fredericton to assess for Agricultural purposes.'"

This Statute refers to previous legislation by which the City of Fredericton was authorized to issue debentures to an amount not exceeding \$1,500 to be appropriated in assisting the York County Agricultural Society in raising funds to pay off a balance due on the exhibition building in the City of Fredericton. It recites that the city did not issue the debentures so authorized, and that John H. Reid, President of the York County Agricultural Society, has claimed that he is entitled to receive from the City Council of the City of Fredericton the sum of \$1,500 with interest. The Statute proceeds to provide that Mr. Reid's claim shall be referred to the arbitration of three arbitrators, one to be appointed by Mr. Reid, one by the city, and the other by the Judge in Equity, that the arbitrators shall proceed to take evidence with respect to the amount of the claim which Mr. Reid has either personally or as President of the York County Agricultural Society by reason of money expended by him in connection with the building of the Exhibition Palace (so called) in the year 1863 and the following years; and that it shall be the duty of the arbitrators, after hearing the matter to decide what amount, if any, the City of Fredericton should in honour and good conscience pay to Mr. Reid, in determining which amount the arbitrators are to decide irrespective of the Statute of Limitation and without regard to legal forms or technical objections. The amount found due upon such reference is to constitute a legal claim against the city for which the city is to cause debentures to be issued to Mr. Reid.

There has been referred to the undersigned, copy of a memorial addressed to Your Excellency by the Mayor, Aldermen and Community of the City of Fredericton

in which the memorialists complain of the injustice of this Statute, and they pray "that the Bill may not receive Your Excellency's assent, but that the action of the said Bill may be withheld."

The undersigned observes that the Statute has been assented to by the Lieutenant Governor and has gone into effect, and that its operation cannot, therefore, depend upon any assent on the part of Your Excellency. The power of disallowance which is the only power vested in Your Excellency by the exercise of which the operation of the Statute could be interfered with has not heretofore been exercised upon grounds such as are urged by Your Excellency's memorialists. There can be no doubt that the legislation complained of is exclusively within Provincial authority, either as matter of property and civil rights or private and local matters with the Province, and although the provision is somewhat an unusual one by which the city is compelled to submit to arbitration, a claim of upwards of thirty years' standing upon conditions under which the arbitrators are to decide, apparently not upon legal grounds, but upon the grounds of honour and good conscience, yet the undersigned does not consider that the injustice complained of is such, or so apparent, as would justify Your Excellency in interfering by the exercise of the power of disallowance with a matter which is otherwise entrusted entirely to Provincial authority. Fair provision is made for the appointment of the arbitrators and the hearing of both sides. The decision is to proceed upon the grounds of honour and good conscience, and if the arbitrators are faithful in the discharge of their duty, as the undersigned assumes they will be, no great injustice can come from compelling the parties to submit to the award.

The undersigned does not, however, feel called upon to justify the legislation, but upon the grounds already stated, he considers that the Act should be left to its operation.

The undersigned has the honour to recommend that none of the Statutes referred to in this report be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

61st VICTORIA, 1898

3RD SESSION—3RD LEGISLATIVE ASSEMBLY

(Approved 8 November, 1898)

DÉPARTEMENT DE JUSTICE, OTTAWA, 17th October, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of New Brunswick, passed in the sixty-first year of Her Majesty's reign (1898), received by the Secretary of State for Canada on 25th May, 1898, and he is of opinion that these Statutes may be left to their operation without comment, with the exception of Chapter 55, intituled "An Act relating to the Town of Chatham," as to which he observes that by Section 1 the Town Council is authorized to make such by-laws and regulations as they deem proper for the purposes, among other things, of regulating and licensing the sale of goods brought into the town or for sale by non-residents; of regulating and licensing transient traders, or other persons, firms or corporations whose names have not been entered

on the assessment book of the town in respect to income or personal property for the current year, and of regulating and licensing all persons not being residents of the town or parish of Chatham or County of Northumberland whose names are not so entered in the assessment book and who shall carry on any trade within the town.

These provisions are, in the opinion of the undersigned, capable of a construction which would confer upon the Town Council powers in excess of those which may be granted by a Provincial Legislature. In so far as they may be construed as directly affecting the regulation of trade and commerce they are inoperative. The provisions in question cannot, however, be construed as confined to matters in excess of Provincial authority, and, inasmuch as lawful regulations may be made under them, and as the courts can conveniently afford relief in case of regulations which are *ultra vires*, the undersigned does not recommend the disallowance of the Statute.

The undersigned recommends that a copy of this report, if approved, be sent to the Lieutenant Governor of the Province, for the information of his Government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

62nd VICTORIA, 1899

1ST SESSION—3RD LEGISLATIVE ASSEMBLY

(Approved 18 day of November, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of New Brunswick, passed in the sixty-second year of Her Majesty's reign (1899), and received by the Secretary of State for Canada on 23rd June last, and he is of opinion that these statutes may be left to their operation without comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Humbly submitted,

DAVID MILLS,
Minister of Justice.

63rd VICTORIA, 1900

(Approved 8 December, 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 24th November, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the statutes of the province of New Brunswick, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State of Canada on 28th

June last, and he is of opinion that the statutes may be left to their operation without comment, except—

Chapter 63, intituled: "An Act relating to the town of Newcastle," and

Chapter 86, intituled: "An Act relating to the Tobique Manufacturing Company, Limited."

As to the former of these Acts the undersigned observes that by section 4 the town council is given power to make by-laws and regulations, among other things, to regulate and license traders, manufacturers or other persons, firms or corporations whose names have not been entered on the assessment book or list of the town in respect to income or personal property for the then current year, and who offer goods and merchandise for sale or otherwise carry on trade or business within the town; also to regulate and license any and all persons, who not being residents of the town or parish of Newcastle or county of Northumberland, and whose names are not entered on the assessment list there, shall carry on any trade or employment within the town.

Section 5 authorizes the town council by by-law or ordinance to fix and determine what sum of money shall be paid by such persons, companies or corporations for licenses for the several purposes mentioned in the preceding section; and section 6 prohibits all persons, companies or corporations from engaging in or carrying on any trade or employment within the town for which a license is required, without being thereunto duly licensed.

While it may be competent under the authority so granted for the town council to make regulations which would not be *ultra vires*, it is certainly incompetent to a provincial legislature to enact laws for the regulation of trade and commerce or to delegate any authority to make such laws, and the sections now in question seem to relate in some aspects to that subject.

The undersigned apprehends, however, that in the case of regulations being made in excess of provincial authority the persons affected could conveniently have their rights determined by the courts, and inasmuch as inconvenience might result from disallowance of the Act, which contains many unobjectionable provisions relating to the town of Newcastle, he does not consider it necessary to recommend disallowance.

The undersigned has received a memorial from the Tobique Manufacturing Company, Limited, praying upon the grounds therein set forth, that chapter 86, the other statute mentioned, be disallowed. A copy of this memorial is submitted herewith, but before making any observations upon it, the undersigned considers that it ought to be referred to the Lieutenant Governor of New Brunswick for the information of his government, so that the Lieutenant Governor may submit such reply as he may be advised to the objections of the petitioners.

The undersigned recommends, therefore, that a copy of this report, with a copy of the aforesaid memorial, be transmitted to the Lieutenant Governor of New Brunswick, with a request as to the said chapter 86, for such observations as the Lieutenant Governor may be advised to make upon the memorial of the Tobique Manufacturing Company, Limited.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Copy of Petition of the Tobique Manufacturing Co. (Ltd.)

The petition of the Tobique Manufacturing Company (Limited.)
HUMBLY SHOWETH:—

That your petitioners are a body corporate under an Act passed by the Dominion parliament in the year 1898, being chapter 116 of that year.

That amongst other things the purpose for which the company was incorporated was to do business throughout the Dominion of Canada, and to purchase certain assets, mines, timber limits, &c., specifically mentioned as being situated in the province of New Brunswick. It was also the intention to purchase the Tobique Gypsum Company, being a company incorporated under the Companies Act of Canada and having its head office in the city of Ottawa.

That power was given by the said parliament under the said Act to the company to dam the Tobique river in the province of New Brunswick.

That the Tobique river is a river in which large sums of Dominion moneys have annually been paid for the purpose of improving the navigation and sufficiently large at and above the place that said dam is built, to be navigated by boats or vessels carrying as much as twenty tons of freight.

That under the powers contained in said Act your petitioners proceeded to prepare plans for the dam authorized thereby to be erected in said river, and the said plans were approved by the Governor General in Council on the 19th day of August, 1899. That your petitioners erected the said dam and have also constructed a large mill thereat and all the necessary booms, piers, &c., as provided by said Act.

That the government of the province of New Brunswick, represented by the Attorney General, prepared a bill in equity and gave notice that they would apply to the judge in equity for an injunction to restrain your petitioners and their agents or contractors from proceeding with said work. That when said motion came to be argued an arrangement was entered into between the counsel on each side that the motion should stand until after the legislature of New Brunswick met, in order that a bill might be passed at such session rectifying and confirming the Act passed by the Dominion parliament, as above mentioned.

That notice of said bill was duly given in the newspapers in New Brunswick and the same was presented at the last session of the provincial parliament.

That the same was however refused to be accepted by the government of New Brunswick who, instead thereof, passed a bill drawn by the Attorney General of the province purporting untruly to be the bill prayed for by your petitioners, which bill is now entitled an Act relating to the Tobique Manufacturing Company (Limited) and is chapter 86, of 63 Victoria, A.D. 1900, of the Acts of the general assembly of New Brunswick.

That said Act recites that, in the opinion of Her Majesty's Attorney General for the province of New Brunswick, the work authorized by the Act passed by the Dominion parliament was *ultra vires* of the parliament of Canada, and it pretends to give the authority to your petitioners to do the same work, provided that said Act should not come into force until such time as shall be by the Lieutenant Governor in Council fixed by Order in Council and publication made in the Royal Gazette, and further, that such order shall not be made until it appears to the satisfaction of the Lieutenant Governor that the company have procured the said Act of the parliament of Canada to be amended by repealing the 6th, 7th, 8th, 9th, 10th subsections of section 2 of said Act.

That the said Act of parliament being an Act to incorporate a company to do business throughout the Dominion of Canada and to place obstructions in a navigable river was an Act clearly within the power of the Dominion of Canada, and the parliament of Canada consequently had power to authorize everything that was necessary or incidental to the Act.

That when the provincial parliament attempted to authorize the obstructing of a navigable river, or declare the parliament of Canada to be legislating in a matter which is *ultra vires* of it, or declares a company incorporated to do business throughout Canada to be a body corporate and politic under a certain name, it is attempting to legislate on matters which are *ultra vires* of it, and are entirely within the purview of the parliament of Canada.

Your petitioners therefore pray that the said Act of the provincial parliament of New Brunswick, being chapter 86, of 63 Victoria, A.D. 1900, intituled "An Act relating to the Tobique Manufacturing Company (Limited)," may be disallowed. And as in duty bound your petitioners will ever pray.

JOHN COSTIGAN,
President.

A. Z. CONNELL,
Secretary.

Report of the Attorney General of New Brunswick upon Chap. 86 of 1900.

DEPARTMENT OF THE ATTORNEY GENERAL—NEW BRUNSWICK.

MEMORANDUM and report of the Attorney General, for the information of the Committee of the Executive Council.

The Attorney General reports that he has had under consideration an extract from a report of a committee of the honourable the Privy Council of Canada, approved by His Excellency the Governor General on 8th December, 1900, together with a copy of a petition of the Tobique Manufacturing Company, Limited, addressed to the Hon. the Minister of Justice, praying, upon the grounds therein set forth, that the Act of assembly of New Brunswick, being Chap. 86 of the Acts passed in session of A.D. 1900, may be disallowed.

By order of His Excellency, the Governor General in Council, the said copy of petition has been transmitted to the Lieutenant Governor of New Brunswick, with a request for such observations as the Lieutenant Governor may be advised to make upon the petition of the said company.

Referring to the said petition, the Attorney General reports that, in his opinion, the said company should, for the reasons herein stated, have applied to the legislature of New Brunswick for authority to construct the works contemplated by it, and referred to in the petition.

The river, across which the company proposed to erect its dam, and on the bed of which it intended to build its piers and other works, is not, in the opinion of the Attorney General, a navigable river, within the meaning of the British North America Act. It is a branch of the St. John river, emptying into the same a long distance above the ebb and flow of the tide; and while upon portions thereof small boats of only a few inches draught, towed by horses, are used for the carrying of small quantities of freight, such as lumbermen's supplies, it is no more a navigable river than very many of the small streams in the province, upon which canoes may be used and down which lumber may be floated.

The bed of the river upon which the works of the company are proposed to be constructed belongs to the Crown, as represented by the government of New Brunswick, and in the opinion of the Attorney General the work being entirely of a local character is one in respect of which "not only" has the legislature of New Brunswick jurisdiction, but it is one peculiarly for that legislature to deal with. It would be calculated to lead to grave consequences, if a company, under the pretense of getting the power to trade throughout Canada, should be able to apply to the Dominion parliament and obtain authority to construct a purely local work in one province, involving as it does the interference with the property of the province and the expropriation of private property as well.

The Attorney General also desires to say that it was clearly understood by the government of New Brunswick that the said company concurred fully in the Act which was passed by the New Brunswick legislature; the only objection which was raised by the company being to the clause which suspended its operation until the

Act was brought in force by proclamation. The company has also represented to the government of New Brunswick that it intends to submit itself entirely to the operation of the provincial Act, so far as its works upon the Tobique are concerned, and an understanding has been arrived at with the company that at the next session of the legislature the suspending clause of the Act should be repealed, so that it shall come into force immediately thereafter, and that the company shall seek to obtain a repeal by the parliament of Canada of the sections in the Act incorporating the company, to which the government of New Brunswick takes exception.

The question as to whether or not the river upon which the works of the company are now partially erected, and upon which further erections are to be made, is a navigable river, so that power to erect such works rests wholly with the Dominion parliament, or whether they are as such within the jurisdiction of the provincial legislature, is one of fact.

And the Attorney General respectfully submits that it would not be a proper exercise of the prerogative of His Excellency the Governor General to disallow an Act such as this, which was passed after full inquiry by a committee of the legislative assembly into the facts and circumstances, which appeared to be such as to fully satisfy the legislature that it had the authority to pass the Act in question. Should the power of the legislature to pass the Act be hereafter disputed by the company, it is submitted that recourse should be had to the courts for this purpose.

The Attorney General therefore recommends that his honour be moved to submit the foregoing views to His Excellency the Governor General.

The committee of council concurs in the recommendations of the Attorney General, and His Honour the Lieutenant Governor also concurring therein.

IT IS ACCORDINGLY SO ORDERED.

I, Joseph Howe Dickson, clerk of the executive council, of the province of New Brunswick, do hereby certify, that the foregoing is a true copy of an order in council passed by the Governor in Council of said province on the 25th day of January instant, and that I have carefully compared said copy with the original on file in my office and find it a true and correct copy.

Dated the 29th day of January, A.D. 1901.

JOS. HOWE DICKSON,
Clerk Executive Council, N.B.

The Deputy Minister of Justice to Hon. John Costigan, M.P.

DEPARTMENT OF JUSTICE, OTTAWA, 13th February, 1901.

SIR,—Referring to the petition of the Tobique Manufacturing Company, seeking the disallowance of the New Brunswick Act, 63 Victoria, chapter 86, I am directed to inform you that a copy of the petition was referred to the Lieutenant Governor of New Brunswick for the observations of his government, and there has been transmitted to the minister copy of the reply of the provincial government, being a report of the Attorney General of New Brunswick approved by a minute of the Executive Council. Among other things stated in this report is the following:—

“The Attorney General desires to say that it was clearly understood by the government of New Brunswick that the said company concurred fully in the Act which was passed by the New Brunswick legislature; the only objection which was raised by the company being to the clause which suspended its operations until the Act was brought in force by proclamation. The company has also represented to the government of New Brunswick that it intends to submit itself entirely to the operation of the provincial Act, so far as its works upon the Tobique are concerned, and an

understanding has been arrived at with the company that at the next session of the legislature the suspending clause of the Act should be repealed, so that it shall come into force immediately thereafter, and that the company shall seek to obtain a repeal by the parliament of Canada of the sections of the Act incorporating the company, to which the government of New Brunswick takes exception."

It would appear from the above that an arrangement has been reached between the company and the provincial government for an amendment of the Act, which, as I understand it, would be satisfactory to your company. If this be so, perhaps it will not be necessary for the minister further to consider the objections of the company.

I have the honour to be, sir, your obedient servant

E. L. NEWCOMBE,

Deputy Minister of Justice.

(Approved 6 June, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1901.

To His Excellency the Governor General in Council:

The undersigned, referring to his previous report of 24th November last, on the statutes of the province of New Brunswick passed in the sixty-third year of Her late Majesty's reign, and particularly to Chap. 86 of the said statutes, intituled "An Act relating to the Tobique Manufacturing Company, Limited," has the honour to report that a copy of the Memorial of the Tobique Manufacturing Company, Limited, having been transmitted to the Lieutenant Governor of New Brunswick in accordance with the recommendation of the above-mentioned report, the clerk of the executive council of New Brunswick on 29th January last, transmitted to the clerk of the Privy Council of Canada a report of the Attorney General of New Brunswick, approved by the Lieutenant Governor in Council, in reply to the said memorial. A copy of the said despatch of the government of New Brunswick is submitted herewith. This despatch having been referred to the undersigned, he caused a communication to be sent to the president of the company on 14th February last, a copy of which is also submitted herewith, and the undersigned calls attention particularly to that portion of the provincial despatch which is quoted in the letter of the Deputy Minister of Justice to Mr. Costigan. No reply to that letter has, however, been received, although the Deputy Minister of Justice has spoken to the solicitor of the company, and another gentleman connected with the company, upon the subject. From these conversations and in view of the fact that the company has not replied to Mr. Newcombe's letter of 19th February last, the undersigned is under the impression that the company acquiesce in the facts stated by the Attorney General of New Brunswick, and are not further pressing their petition. The undersigned, therefore, deems it unnecessary to consider the legal questions raised by the Attorney General, although he apprehends no difficulty in establishing the position which has always been claimed on behalf of the Dominion, that parliament has no power to incorporate companies which are to do business in two or more provinces, with authority to construct and operate in connection with their business, local works within a province. As it is understood, however, that an agreement has been reached between the province and the company in the present case, and that further legislation is proposed, the undersigned considers that the Act may be left to such operation as it may have.

The undersigned further recommends, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick and to the Tobique Manufacturing Company, Limited, for their information.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

1 EDWARD VII, 1901

3RD SESSION, 3RD LEGISLATIVE ASSEMBLY

(Approved on the 25 January, 1902)

DEPARTMENT OF JUSTICE, DECEMBER 31st, 1901.

These statutes were received by the Secretary of State for Canada on 13th November last. They do not call for my comment except as follows:—

Chapter 21. "An Act to consolidate and amend chapter 44 of the Consolidated Statutes relating to absconding and concealed and absent debtors."

The undersigned is not satisfied that some of the provisions of this statute do not affect the subject of bankruptcy and insolvency, but he considers that any doubt which may exist upon that question may be properly solved by the courts, and that the Act ought not to be disallowed.

Chapter 27. "An Act in addition to and in amendment of, chapter 50 of the Consolidated Statutes, intituled 'The Court of Divorce and Matrimonial Causes,'" is reserved for a separate report.

Chapter 36. "An Act to provide for the Establishment of District Courts."

This chapter provides that the Province of New Brunswick, with the exception of the City of St. John, shall be divided into judicial districts, and that there shall be held in each district a court, to be called District Court, qualified by the name of the city, town, parish or other district for which the court is established. Every such court is to be held before a commissioner, who shall be appointed by the Lieutenant Governor in Council. The jurisdiction of the court is limited to small cases not exceeding \$80 in matters of contract, and \$40 in matters of tort. If these courts are districts courts within the meaning of section 96 of the British North America Act, it is certain that the statute is *ultra vires*, so far as it authorizes the Lieutenant Governor to appoint the commissioners who are to preside as judges of the court. These courts appear, however, to be intended to take the place of the parish courts and magistrates courts, having limited civil jurisdiction, heretofore established, and they are not courts in the opinion of the undersigned having the dignity of the district courts intended by the British North America Act. He considers, therefore, that the statute ought not to be disallowed.

C. FITZPATRICK,
Minister of Justice.

(Approved 17 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, December 30th, 1901.

To His Excellency the Governor General in Council:

Referring to chapter 27 of the statutes of New Brunswick, 1 Edward VII, 1901, intituled, "An Act in addition to, and in amendment of, chapter 50 of the Consolidated Statutes, intituled, 'The Court of Divorce and Matrimonial Causes,'" the undersigned has the honour to state that provision is made in the first section for a judge of the court disposing of cases pending in the time of his predecessor, the intention being apparently that the proceedings and evidence already taken shall be available and acted upon in the same manner as if they had been taken before the succeeding judge. This provision relates solely to the procedure of court, and although different views may be held as to the validity of such provincial legislation, having regard to the fact that the whole subject of divorce is mentioned as a matter for the exclusive legislative authority of Parliament, the undersigned considers that the procedure of the court is competent to a Legislature under one or other of the provincial enumerations, and he

would, therefore, advise that this section, if it stood alone, should be left to its operation. The following section, however, provides that in the event of such newly appointed judge being disqualified to hear a case, for any reason, any other judge of the Supreme Court named by the judge so interested to act as judge of the Court of Divorce and Matrimonial Causes for the completion of such suit or matter, may proceed therewith, and in all respects, and with the same rights, and also the same rights to the parties as if he had been the duly appointed judge of the said court. This section plainly transgresses the exclusive authority of Your Excellency to appoint the judges of provincial courts. It is *ultra vires*, and affecting as it does the validity of proceedings and decrees relating to divorce, the undersigned considers that the statute must be disallowed unless section 2 be repealed within the time limited for disallowance.

The undersigned recommends that enquiry be made of the Lieutenant Governor of New Brunswick as to whether this section will be so repealed.

Respectfully submitted.

C. FITZPATRICK,
Minister of Justice.

Minute of Executive Council of the Province of New Brunswick, respecting Chapter 27.

The committee of the Executive Council have had under consideration a despatch from the Under Secretary of State for Canada, enclosing a Report of the Honourable the Minister of Justice in reference to Chapter 27 of the Statutes of New Brunswick, 1 Edward VII, 1901, intituled: "An Act in Addition to and in amendment of Chapter 50 of the Consolidated Statutes, intituled, 'The Court of Divorce and Matrimonial Causes,'" in which the Minister states that, in his opinion section 2 of the said Act is *ultra vires* of the Provincial Legislature, and recommends that inquiry be made of the Lieutenant Governor of New Brunswick as to whether this section will be repealed. The Committee have also had under consideration a report of the Committee of the Honourable the Privy Council of Canada, approved by His Excellency the Governor General on the 17th January, 1902, stating that the Committee of the Privy Council concur in the said report and advise a certified copy thereof and of the said report be transmitted to His Honour the Lieutenant Governor.

The Committee of Council, having considered the report of the Honourable the Minister of Justice and also the report of the Committee of the Honourable the Privy Council, are of opinion that it would be desirable to meet the views of the Minister of justice in respect to section 2 of the said Act; and recommend that at the coming session of the Legislature a Bill should be submitted repealing the section in which objection is made.

The Committee of Council respectfully submit this minute for the approval of His Honour the Lieutenant Governor, and recommend that a copy be transmitted to the Secretary of State for Canada.

A. R. McCLELAN,
Lieutenant Governor, New Brunswick.

2 EDWARD VII, 1902

4TH SESSION, 3RD LEGISLATIVE ASSEMBLY

Extract from a report, dated 24th November, 1902, approved 12 December, 1902

These statutes were received by the Secretary of State on 14th July last. The only Acts which appear to call for comment are:—

Chapter 101, "An Act relating to the Royal Trust Company."

This is the company affected by Chapter 103 of the Statutes of Ontario, hereinbefore mentioned, and the legislation is subject to the same objections and remarks as stated with regard to the Ontario statute.

Chapter 104, "An Act to incorporate 'The Moncton and Eastern Railway Company.'"

Chapter 105, "An Act to incorporate 'The Fredericton and Western Railway Company.'"

These Acts are subject to the objection which has been several times stated with regard to similar provincial legislation, that it is incompetent to a province to authorize the construction and operation of a railway extending from a point within the province to a point upon the boundary line between that province and another province.

The undersigned, however, following previous practice in similar cases, does not recommend the disallowance of these Acts.

C. FITZPATRICK,
Minister of Justice.

3 EDWARD VII, 1903

1ST SESSION, 4TH LEGISLATIVE ASSEMBLY

Extract from a report, dated 8 January, 1904, approved 23 March, 1904

These Statutes were received by the Secretary of State for Canada on 13th August, 1903.

Chapter 73, intituled, "An Act to incorporate the Town of Dalhousie for water, sewerage, fire, light and police purposes."

Contains a provision, section 31, authorizing the commissioners to make by-laws, amongst other purposes, to enforce the due observance of the Lord's Day, commonly called Sunday, and punish vice, immorality and indecency on the streets or other public places within the town.

This provision appears to affect the subject of criminal law, and may, for that reason, not be within the authority of the Legislature. The undersigned, however, does not on that account consider that the Act should be disallowed.

The undersigned further recommends that the remaining statutes, passed in the year 1903, be left to such operation as they may have.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

4 EDWARD VII, 1904

(Approved 16 November, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last session of the legislatures thereof (1904), as follows:—

* * * * *

New Brunswick, 4 Edward VII.—received by the Secretary of State on 20th June, 1904.

These statutes may be left to their operation except

Chapter 72, intituled "An Act to incorporate The Maritime Copper Company (Limited)."

By which a company is incorporated with various powers to acquire, work and dispose of mines, and among others powers, "to purchase, acquire, take over, hold, use, occupy, and possess mineral lands, leases, mining claims, licenses and rights, interest, options, grants, easements, authorities and privileges in the province of Nova Scotia and New Brunswick, and elsewhere in the Dominion of Canada," and to improve, manage, develop, lease, sell, mortgage, hypothecate, dispose of or otherwise deal with any part or all of the property and rights of the company, including the granting of powers to work any mine or mines or claims or patents of the company, upon any terms, and with power, subject to the provisions of any lawful authorities having jurisdiction in the premises, and to accept as a consideration therefor any shares, stocks, debentures or securities of any other company."

These powers are clearly in excess of provincial authority to grant. It is within the exclusive authority of parliament to incorporate a company to carry on business throughout the Dominion or in more provinces than one, and this Act, giving the company power to acquire, work and dispose of mines in the provinces of Nova Scotia and New Brunswick, and elsewhere in the Dominion of Canada is certainly *ultra vires*. Before recommending disallowance, however, the undersigned considers that Your Excellency's government should ascertain from the Lieutenant Governor of New Brunswick whether the legislature will repeal this Act or make amendments at the next session of the legislature, and within the time allowed for disallowance, limiting the business of the company to the province of New Brunswick. After being advised of the reply of the Lieutenant Governor the undersigned will make a further recommendation.

Chapter 87, intituled "An Act to incorporate The Auto Road Company," contains a section relating to aliens similar to those already referred to, and subject to the same comment.*

* * * * *

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province shall be communicated to the Lieutenant Governor of the province.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

The Lieutenant Governor transmitted the following reply on the twelfth of December, 1904:—

FREDERICTON, N.B., December 7, 1904.

SIR,—I have the honour to inform you that, as Acting Attorney General, I have had the subject matter of the communication from the Department of Justice, directed to your Honour, under date of 29th October ult., containing an abstract of the report of the Minister of Justice on the statutes passed by the province of New Brunswick at the last session of the Legislative Assembly, and drawing attention to the fact that chapter 72, intituled: "An Act to incorporate The Maritime Copper Company, Limited," is *ultra vires* the powers of the provincial legislature, and that the section relating to aliens, in chapter 87, intituled: "An Act to incorporate The Auto Road Company," is also *ultra vires*, under consideration, and, with the concurrence of the committee of the executive council, to state that at the next session of the Legislative Assembly a measure will be submitted to amend the first Act named, limiting the busi-

ness of the company to the province of New Brunswick, and the last named Act will be amended by repealing the section relating to aliens.

I have the honour to be, sir,

Your obedient servant,

L. J. TWEEDIE,

Acting Attorney General.

To His Honour,
The Honourable JABEZ BUNTING SNOWBALL,
Lieutenant Governor.

ST. JOHN, N.B., February 8th, 1905.

To the Honourable CHARLES FITZPATRICK,
Minister of Justice,
Ottawa.

SIR,—I desire to call your attention to the communication of the Honourable L. J. Tweedie, under date of December 7th, 1904, addressed to His Honour, the Lieutenant Governor, and which has been forwarded by His Honour to the Secretary of State, referring to your report upon the statutes passed at the last session of the legislature of this province, in which you express the opinion that the powers granted by chapter 72 to the Maritime Copper Company, Limited, and a provision in chapter 87, "An Act to incorporate the Auto Road Company," relating to aliens, are *ultra vires* of the provincial legislature.

Upon further consideration of the matter by the committee of the executive council, I am directed to say that while there is no objection to amending the Acts referred to in accordance with Mr. Tweedie's assurance, yet the question involved is one of considerable importance as affecting the powers of the provincial legislature, and the committee is desirous that a case should be stated for the opinion of the Supreme Court of Canada, in order to determine as to the constitutionality of such provisions. The Premier and I expect to be in Ottawa next week, and will be pleased to discuss the subject with you.

In this connection I would like to call your attention to the fact that the legislature of Ontario has legislated along similar lines. To mention one instance: In 1890, by chapter 24, incorporating The Sault Ste. Marie and Hudson's Bay Railway Company, section 22 authorizes aliens to hold stock in the company, and section 29 gives power to the company to make an agreement with a railway company in the state of Michigan for the use of its road.

For many years the New Brunswick Government has been in the habit of conferring upon companies incorporated for provincial objects power to hold property and do business outside the province. I understand that the Ontario Government, and probably other provincial governments have followed the same course.

If your view is correct, the charters of these companies would be invalid. You will, therefore, see that the question is one which it would be desirable to have settled.

I would suggest that the opinion of the Supreme Court be asked on the following questions:—

1. Is it competent for a provincial legislature to authorize a company, incorporated for provincial objects, to hold property and carry on business in other provinces of Canada or in other countries?
2. Is it competent for the legislature to authorize such company to hold meetings of shareholders or directors outside the province?
3. Can the legislature provide that aliens may hold stock in such company?

I have the honour to be, sir,

Your obedient servant,

WILLIAM PUGSLEY,

Attorney General of New Brunswick.

5 EDWARD VII, 1905

(Approved February 3, 1906)

DEPARTMENT OF JUSTICE, OTTAWA, December 16, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislative Assembly of the Province of New Brunswick, passed in the fifth year of His Majesty's reign, 1905, and received by the Secretary of State for Canada on July 13th last, and he is of the opinion that these statutes may be left to such operation as they may have except

Chapter 14, intituled "An Act for the prevention of Fires in connection with surveys and construction of the National Transcontinental Railway, and other railways passing through Forest Lands in New Brunswick," and

Chapter 84, intituled "An Act to amend the Act incorporating the 'Maine and New Brunswick Electrical Power Company, Limited.'"

Separate reports will be made upon these two statutes.

The undersigned desires to add, with regard to chapter 7, "An Act for the Protection of persons employed in Factories," that some of its provisions appear to be objectionable as affecting the criminal law. Any such question may, however, be conveniently determined by the courts, and the undersigned does not, therefore, deem it necessary to consider these provisions further or to recommend disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of New Brunswick, for the information of his Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 3 February, 1906)

DEPARTMENT OF JUSTICE, OTTAWA, 18th December, 1905.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration Chapter 14 of the Acts of the Legislative Assembly of the Province of New Brunswick, 1905, intituled

An Act for the prevention of Fires in connection with surveys and construction of The National Transcontinental Railway, and other railways passing through forest lands in New Brunswick.

It is provided by this Act that the Lieutenant Governor in Council may employ a forest fire warden in connection with the surveying of the National Transcontinental Railway through the province of New Brunswick, who shall accompany each of the survey and construction parties; that it shall be the duty of the head of each survey party, and the various contractors, foremen and other persons engaged in construction, to afford all possible facilities and assistance to the persons so appointed by the Lieutenant Governor for the prevention of fires, under a penalty of fifty dollars, and that the wages and expenses of these forest fire wardens while so employed should be payable by the heads of the survey parties and the contractors in manner provided by the Act.

These provisions are, in the opinion of the undersigned, *ultra vires* of the legislature, affecting as they do the public debt and property of Canada and a Dominion railway which is beyond provincial legislative powers.

Your Excellency's Government is no doubt prepared to make suitable arrangements for the observance by those engaged on behalf of the government in the location and construction of the railway of the laws for the protection of the forests and of proper regulations for the prevention of fires, etc., and it is quite likely that arrangements might be assented to upon the lines proposed by this Act, but it is for obvious reasons impossible for Your Excellency's Government to acquiesce in provincial legislation which attempts to enforce duties or charges upon the Dominion.

The undersigned hopes, therefore, that the Provincial Government upon reconsideration of the matter will undertake to have this Act repealed at the next session of the legislature, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick for the consideration of his government with a request that he inform Your Excellency's Government whether the Act will be so repealed within the time limited for disallowance.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 3 February, 1906)

DEPARTMENT OF JUSTICE, OTTAWA, 18th December, 1905.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration Chapter 84 of the Acts of the Legislative Assembly of the Province of New Brunswick, 1905, intitled

"An Act to amend the Act incorporating the 'Maine and New Brunswick Electrical Power Company, Limited.'"

By this statute it is enacted that the company, with the consent of the Legislature of the State of Maine may sell and supply electricity in the said state, and for that purpose accept the franchises, powers and privileges conferred upon it by an Act of the legislature of the said state annexed to this statute and marked Schedule A, and that the company may consolidate and work its franchises with those granted as aforesaid by the Legislature of Maine as one single enterprise; also that its charter shall be read and construed as if the several rights and franchises granted by the Legislature of New Brunswick and by the Legislature of the State of Maine had been included in and granted as a whole by the Legislature of New Brunswick.

The Act of the Legislature of the State of Maine is set forth in the schedule, and by it powers are conferred upon the company to carry on its works and supply electricity in that state.

The state contemplates, therefore, to extend the business of a company incorporated by and doing business within the province of New Brunswick to a foreign country adjoining. This involves, as the undersigned understands the matter, the extension of the wires and works of the company from New Brunswick into the State of Maine.

The undersigned apprehends that the powers sought to be conferred by this Act are not within the authority of the legislature of New Brunswick to grant. The power of a provincial legislature to incorporate companies is limited to the incorporation of companies with provincial objects. The extension of the business of this company into the state of Maine, and the carrying on of its powers there under an Act of the legislature of the state are certainly not provincial objects. Moreover, the works of the company cannot be carried into the state of Maine under provincial authority, because local works and undertakings extending beyond the limits of a province are, so far as concerns the British North America Act, exclusively within the legislative authority of parliament.

Before recommending the disallowance of this Act, however, the undersigned considers that it should be submitted to the local government for any observations which they may desire to offer for the consideration of Your Excellency in Council, or it may be that considering the invalidity of the Act the local government would desire to repeal it.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick, for the consideration of his government and such reply as he may be advised.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved March 10, 1906)

DEPARTMENT OF JUSTICE, OTTAWA, February 16th, 1906.

To His Excellency the Governor General in Council:

The undersigned has received a petition from the Grand Falls Water Power and Boom Company, addressed to Your Excellency in Council, which is submitted herewith, whereby the petitioner prays for the disallowance of chapter 17 of the statutes of New Brunswick, 1905, intituled: "An Act to confirm the charter of the Grand Falls Power Company, Limited."

The undersigned calls attention particularly to two of the grounds mentioned by the petitioners, first, that the effect of the Act is to authorize the expropriation of lands belonging to the Dominion, or of leasehold interest in such lands, and secondly, that the works authorized by the Act will obstruct or impede the navigation of the St. John river.

The undersigned recommends that a copy of this petition be transmitted to the Lieutenant Governor of New Brunswick, and that he be requested to inform Your Excellency's government, as soon as conveniently may be, as to what the answer of his government is, particularly with regard to the points specially herein mentioned.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

To His Excellency the Governor General in Council:

The Petition of the Grand Falls Water Power and Boom Company.

HUMBLY SHEWETH:

1. That by Chapter 77 of the Acts of the Dominion of Canada (58 and 59 Victoria) passed on the twenty-second day of July, in the year of our Lord, one thousand eight hundred and ninety-five, your petitioners were incorporated and by the said Act were authorized to purchase and acquire lands and properties, and were therein authorized to carry on the works set out in said Act. It was, however, provided in said Act that the construction of the works therein mentioned shall be commenced within three years and completed within six years from the passing thereof; otherwise the powers granted under said Act shall be null and void as respects so much of the works as then remain uncompleted.

2. That by Chapter 99 of the Acts of the Dominion of Canada (1 Edward VII), passed on the twenty-third day of May, in the year of our Lord one thousand nine hundred and one, your petitioners' company were given three more years within which to construct and complete its works.

3. That by Chapter 83 (1 Edward VII), of the Acts of the Legislative Assembly of the Province of New Brunswick, passed on the third day of April, in the year of our Lord one thousand nine hundred and one, after reciting that your petitioners, the Grand Falls Water Power and Boom Company were incorporated by the Parliament of the Dominion of Canada (58 and 59 Victoria, Chapter 77), it was enacted that your petitioners' company should have all the powers incident to a corporation under the laws of the province of New Brunswick and the construction of the works therein mentioned to be completed within three years from the passing of said Act, and it was therein stated that the construction of the said works shall be *bona fide* commenced and fifty thousand dollars expended on such works before the first day of March, A.D. 1903, and at least the sum of two hundred and fifty thousand dollars expended on said works within three years from the passing of said Act; otherwise the powers thereby granted to cease and to be null and void as respects so much of the said works as then remain uncompleted.

4. That your petitioners are the riparian owners of the water-power rights at Grand Falls, in the county of Victoria, and Province of New Brunswick; that they have acquired by lease through the Minister of the Interior, lots "A", "B" and "C" of the ordnance lands (so called) at Grand Falls, said lease being dated the twenty-seventh day of April, A.D., 1894; and having been made by Her late Majesty the Queen to Edwin Jack and Walter Armstrong and by them assigned to your petitioners the said The Grand Falls Water Power and Boom Company.

5. That by Indenture of lease bearing date the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and ninety-four, Her Majesty the Queen, as represented by the Surveyor General of the Province of New Brunswick, assigned to James Hayes, of the State of Maine, all that parcel of land lying on the westerly side of the River Saint John, between the Commons (so called) and the river and including a small island in the River Saint John above the Grand Falls containing two acres more or less, a half interest in the said leasehold lands being now vested in your petitioners.

6. That your petitioners also acquired the mill, mill rights, mill privileges, mill site, water-power, right of flowage, easements and land belonging thereto situate at Grand Falls aforesaid, formerly owned by one Onésime Parent.

7. That your petitioners are also the owners of other lands at and adjacent to the said Grand Falls, and your petitioners claim that they, as riparian owners as aforesaid, own the water rights and privileges at Grand Falls aforesaid.

8. That by letters patent under the Great Seal of the Province of New Brunswick made and issued on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and five, Barton E. Kingman and his associates were incorporated under the name of The Grand Falls Power Company, Limited.

9. That by Chapter 17 of the Acts of the Legislative Assembly of the said Province of New Brunswick (5 Edward VII), passed on the fourteenth day of April, in the year of our Lord one thousand nine hundred and five the grant of said Letters Patent was confirmed. Said Letters Patent are set out in full in said Act.

10. That by said chapter 17 of Edward VII, passed as aforesaid by the Legislature of the Province of New Brunswick, the said the Grand Falls Water Power Company, Limited, are authorized and empowered to conduct a portion of the waters of the Saint John river to such point as may be deemed by the company most fit and proper for the development of the power to be derived therefrom and are authorized to build at the head of the Grand Falls and the Narrows and gorge between the upper and lower basins aforesaid and below them, and at such other points as may be deemed advisable, all such dams, wingdams, sluices, conduits and buildings as are or may be necessary, and to construct and attach to the shores and banks of the Saint John River in the vicinity of Grand Falls and maintain side booms, piers, wharfs, slips and other works necessary for the operation of any saw or pulp mills or manufactories, such side booms and piers to be extended from the upper basin above the falls up the Saint John river to such a

distance as is necessary to hold the logs, timber and wood of any kind from the saw or pulp mills which may be built by the company at or near the Grand Falls.

11. That by said Act power was given to the company to expropriate lands or privileges. The powers of expropriation given are unusual; namely, that on the filing of a plan and description of the land as provided for in said Act, the company is invested with the actual title and becomes the legal owner of the property as described in said plan. There is no adequate provision for the payment of the damages that may be assessed. That under said expropriation power the Grand Falls Power Company, Limited, claim that they have the right to expropriate and take the lands held under lease by your petitioners from His Majesty the King as represented by the Department of the Interior.

12. That the water-power privileges owned at Grand Falls aforesaid by your petitioner will be rendered of no value if the works contemplated by the said Grand Falls Power Company, Limited, are carried out and the water diverted as aforesaid.

13. That the erection of said works authorized by said Act will obstruct or impede navigation.

14. That by article 3 of the Ashburton Treaty (1842) it is provided that the navigation of the Saint-John river shall be free and open to both parties and shall in no way be obstructed by either. That all the products of the forests—logs, lumber, timber, boards, staves or shingles—grown on land in the State of Maine watered by the River St. John or its tributaries shall have free access to and through the said river to the seaport at the mouth of the said river St. John.

15. Special caution is therefore necessary that no legislation shall be passed authorizing a private company to interfere therewith.

16. That the object and intention of the Act complained of is to deal with matters over which the province has no jurisdiction and to deal with matters entrusted to the exclusive jurisdiction of the Dominion Parliament.

Wherefore, your petitioners pray that pursuant to the authority vested in Your Excellency by the British North America Act, the said Act, being Chapter 17, 5 Edward VII, entitled "An Act to confirm the charter of the Grand Falls Power Company, Limited," may be disallowed or such of the provisions thereof as authorize works which will interfere with the navigation of the River St. John or allow the expropriation of land owned by His Majesty the King as represented by the Minister of the Interior or other property owned by your petitioners.

And your petitioners ever pray.

THE GRAND FALLS WATER POWER AND BOOM COMPANY,

By HUGH H. McLEAN,

Vice-President.

Report transmitted by the Lieut. Governor 14 April 1906

MEMORANDUM AND REPORT OF THE ATTORNEY GENERAL FOR THE INFORMATION OF THE COMMITTEE OF THE EXECUTIVE COUNCIL

The Attorney General reports that he has had under consideration an extract from a report of the Committee of the Privy Council of Canada, approved by His Excellency the Governor General on the Third January, 1906, together with a report of the Honourable the Minister of Justice upon chapter 14 of the Acts of the Legislative Assembly of the Province of New Brunswick, 1905, intituled "An Act for the prevention of fires in connection with surveys and construction of the National Transcontinental Railway and other railways passing through forest lands in New Brunswick."

The Minister calls attention to the provisions of the Act, authorizing the Lieutenant Governor in Council to employ forest fire wardens in connection with the surveying of the National Transcontinental Railway through the Province of New Brunswick, who shall accompany each of the survey and construction parties, and to the further provision making it the duty of the head of each survey party and the various contractors and foremen and other persons engaged in construction to afford all possible facilities and assistance to the person so appointed by the Lieutenant Governor in Council for the prevention of fires, and also providing that the wages and expenses of these forest fire wardens, while so employed, shall be paid by the heads of the survey parties and the contractors in manner provided by the Act.

The Minister states that these provisions are, in his opinion, *ultra vires* of the Legislature, and expresses the hope that the Provincial Government, upon reconsideration of the matter, will undertake to have said Act repealed at the then next session of the legislature.

The Attorney General is not prepared to admit that it is beyond the competency of the Provincial Legislature to make such provision as it deems necessary for the protection of the Public Domain from destruction or injury through fires which might result from the negligence of surveyors or contractors, even although they might be employed by the Dominion Government and engaged in the construction of Dominion work; but in view of the fact that an amicable arrangement has been come to between the Provincial Government and the Minister of Railways and Canals for the employment of forest fire wardens, to be appointed by the Provincial Government, their wages to be paid by the Department of Railways and Canals, the Attorney General was of opinion that it would be desirable in the public interest to repeal the said Act, and the Provincial Government having acquiesced in this view, the said Act was repealed at the last session of the legislature, and another enactment passed bearing upon the subject, but not containing any of the provisions to which exception has been taken by the Minister of Justice.

The Attorney General recommends that a copy of this report, if approved, be transmitted to the Honourable the Secretary of State for the information of His Excellency the Governor General in Council.

The Committee of Council concurring in the report of the Attorney General, recommend its adoption.

J. B. SNOWBALL,

Lieutenant Governor.

Certified: Passed April 14th, 1906.

JOS. HOWE DICKSON,

Clerk of the Executive Council of N.B.

MEMORANDUM and report, of the Attorney General for the information of the Committee of the Executive Council.

The Attorney General reports that he has had under consideration an extract from a report of the Committee of the Privy Council of Canada, approved by His Excellency the Governor General on the tenth March, 1906, together with a copy of a petition of The Grand Falls Water Power and Boom Company, praying that the Act, 5 Edward VII, Chapter 17, passed by the Legislature of the Province of New Brunswick, intituled "An Act to confirm the Charter of the Grand Falls Power Company, Limited," may be disallowed, or (quoting from the petition) "such of the provisions thereof as authorize works which will interfere with the navigation of the River Saint John, or allow the expropriation of land owned by His Majesty the King as represented by the Minister of the Interior, or other property owned by the petitioners."

The Attorney General observes that the Honourable the Minister of Justice desires to call attention particularly to two of the grounds mentioned by the peti-

tioners:—First, that the effect of the Act is to authorize the expropriation of lands belonging to the Dominion, or of a leasehold interest in such lands; and secondly that the works authorized by the Act will obstruct or impede the navigation of the Saint John River. The Government of New Brunswick is desired, as soon as conveniently may be, to inform His Excellency's Government as to what the answer of the New Brunswick Government is to the said petition, particularly with regard to the points above specially referred to.

As the question of the right of the Provincial Legislature to pass the Act referred to is one of very great importance from the standpoint of provincial rights, and also by reason of the fact that if the Act should be disallowed the effect might be, and in all probability would be, to delay, if not altogether to defeat the carrying on of an enterprise of the greatest possible importance to the province, it seems desirable that the attention of His Excellency in Council should be called in somewhat minute detail to the facts bearing upon the subject.

In the first place it seems to the Attorney General rather remarkable that the objection to the competency of the provincial legislature to pass the Act objected to should be raised by the Grand Falls Water Power and Boom Company, which, after being incorporated by the Dominion parliament in the year 1895, upwards of ten years ago, were so doubtful as to the authority of the Dominion parliament to grant to the company the desired powers, that they came to the New Brunswick legislature, as stated in the petition, in the year 1901, and obtained legislative authority to construct the works mentioned in and purporting to be authorized by the Dominion charter. The legislature of New Brunswick had as much power to pass the Act 5 Edward VII, chapter 17, as it had to pass the Act 1 Edward VII, chapter 83 relating to the petitioner.

Notwithstanding that the petitioners received legislative authority from both the Dominion and the Provincial legislatures, and it was made by the latter a condition of their charter that the company should *bona fide* commence work and expend the sum of at least \$150,000 before the first of March, A.D. 1903, the company utterly failed to comply with such condition, and, not having commenced the construction of the authorized works, their powers have lapsed.

It is clear to the Attorney General that the proposed works being purely of a local character, the Provincial Legislature is the proper legislative body, and indeed, the only legislative body empowered to grant the charter. Even if the works would in any way obstruct or impede the navigation of the Saint John river, which is denied, the Act to which exception is taken, by section 2, makes ample provision for preserving the navigation by providing that the company shall file a plan of its proposed works and a description of the proposed site with the Minister of Public Works of Canada, and obtain the approval of the Governor in Council of such site and plans, pursuant to the provisions of Chapter 92 of the Revised Statutes of Canada and any Act or Acts in amendment thereof. But it is a misstatement of fact to say that the proposed works will obstruct or impede the navigation of the St. John river. That river is not navigable except for small boats above Woodstock, which is about 74 miles below the Grand falls. These falls are of a height of about 74 feet, with a further descent in the rapids of the gorge of 45 feet, and form an absolute obstruction to navigation. Above the falls the only purposes of navigation to which the river is put are for the floating of logs down the river and by using it for canoes, row-boats, batteaux and the like. It will be observed that the letters patent provide, as will be seen on page 109 of the printed Acts, that nothing therein contained shall permit of any power being exercised in such a way as to interfere with the driving of logs, lumber and timber in the river, and provision is made for notice of the proposed works being given to the Madawaska Log Driving Company and the St. John River Log Driving Company, and for the approval of plans by the Chief Commissioner of Public Works.

In section 14 of the petition it is alleged that by Article 3 of the Ashburton Treaty it is provided that the navigation of the St. John river shall be free and open

to both parties, and shall in no way be obstructed by either; that all the products of the forest, logs, lumber, timber, boards, staves or shingles grown on land in the State of Maine watered by the River St. John or its tributaries, shall have free access to and through the said river to the seaport at the mouth of the said River St. John. In considering this section, it must be observed that the language of the first portion is used in the treaty as applicable to that portion of the river where it forms the boundary between the State of Maine and the Province of New Brunswick, whereas the river at Grand falls is wholly within the province. The remainder of the clause is intended to provide that no customs duties shall be exacted upon products of the State of Maine passing down the river. The Ashburton Treaty, therefore, has no bearing upon the subject, although the provincial government recognizes that it would not be in the public interest to authorize—and it would not be a party to authorizing—any works which would obstruct the navigation of the river and prevent the free passage of lumber down the same.

Having reference to the objection raised by the petitioners that the effect of the Act is to authorize the expropriation of lands belonging to the Dominion, or a leasehold interest in such lands, the Attorney General reports that the Dominion lands referred to by the petitioners in section 4 of the petition are upon the opposite side of the river from that where the works of the company will be situate, and he is informed that it will not, in the opinion of the company, be necessary to occupy any of these lands. This question, however, does not seem to be of importance, because the Act does not profess to give authority to expropriate the property of the Crown, and it contains no words from which such authority could be inferred. It is a principle of construction that the Crown is not intended to be included in any Act unless mentioned in express words, and, therefore, it will be assumed that in giving authority to expropriate lands, the provincial legislature did not intend to confer any power to expropriate lands belonging to the Dominion government. If the possibility that the company might want lands owned by the Dominion were sufficient to prevent a provincial statute being held *intra vires*, no Act incorporating a railway company which gave the power to expropriate lands for its right of way, station ground, &c., would be held valid, because by possibility the company might find it desirable to use for such right of way or station grounds land which belonged to the Dominion.

It may not be out of place to call attention to the fact that the lease of a portion of the ordnance lands referred to in the petition was obtained by the petitioners expressly for the purpose of developing the water-power at Grand falls, and upon the assurance given, as the Attorney General is informed, by the petitioners to the Government that such works would be undertaken by the petitioners; so that the position of the petitioners is that having obtained legislative powers and concessions on the faith of their alleged intention and ability to proceed with the work in which they have utterly failed, they are now seeking to obstruct the carrying on of the undertaking by others, who, by the deposit of \$50,000 with the Receiver General to be forfeited in case the works are not undertaken and carried to completion, and otherwise, have given evidence of their *bona fides* and financial ability.

With regard to the provision to which the petitioners object that unusual powers of expropriation are given to the company, the Attorney General is of the opinion that the Act most amply protects the interests of all persons whose property the company might desire to expropriate. It must be borne in mind that before filing a plan and description of land, as provided for in the Act, the company must obtain the consent of the Lieutenant Governor in Council, and such consent can only be given after he has made inquiry at the expense of the company into the value of such water rights, lands, rights or privileges which the company desires to expropriate, and the company shall deposit with the Receiver General such amount as the Lieutenant Governor in Council shall deem necessary in order to pay therefor. (See page 115 of Acts, containing paragraph 6 of charter), and this amount is to be applied by the Receiver General toward the payment of the damages which the claimants may recover.

The fact that such care has been exercised for the protection of the rights of the claimants is, of course, not material to the question, which has been raised, but the Attorney General thinks it desirable to have attention called to the matter, by reason of the allegations contained in the petition.

The Attorney General recommends that a copy of this report, if approved, be transmitted to the Honourable the Secretary of State for the consideration of His Excellency's government.

The committee of Council concur in the report and recommendation of the Attorney General.

Certified; Passed April 14th, 1906.

J. B. SNOWBALL,

JOS. HOWE DICKSON,

Lieutenant Governor.

Clerk of the Executive Council.

MEMORANDUM and Report of the Attorney General for the Information of the Committee of the Executive Council.

The Attorney General has under consideration an extract from a report of the Committee of the Privy Council of Canada, approved by His Excellency the Governor General on the 3rd February, 1906, together with a report of the Honourable the Minister of Justice, with respect to chapter 84 of the Act of the Legislative Assembly of the Province of New Brunswick, 1905, intituled: "An Act to amend the Act incorporating the Maine and New Brunswick Electrical Power Company, Limited."

The Attorney General observes that the Minister of Justice is of the opinion that the authority granted by the Legislature to the company to exercise such powers and privileges are conferred upon it by an Act of the Legislature of the State of Maine, and to consolidate and work its franchises with those granted by the Legislature of said state as one enterprise, &c., is *ultra vires* of the Provincial Legislature.

The Attorney General is not able to concur in the opinion expressed by the Minister of Justice that it is *ultra vires* of a Provincial Legislature to permit a corporation which it has created to exercise in another state or province such franchises, powers and privileges as may be conferred upon it by the legislative authority of such state or province, and submits that strong reasons could be urged against the view taken by the Minister of Justice. As, however, the company, after a conference between its representatives and the minister, thought it better to have those features of the Act to which he took exception eliminated, this view was acquiesced in at the last session of the legislature, and the Act referred to was repealed, and a new statute passed not containing the provisions to which exception was taken by the minister.

The Attorney General recommends that a copy of this report, if approved, be transmitted to the Honourable Secretary of State for the information of His Excellency the Governor General in Council.

The Committee of Council, concurring in the said report, recommends its adoption.

Certified: Passed April 14th, 1906.

J. B. SNOWBALL,

JOSEPH HOWE DICKSON,

Lieutenant Governor.

Clerk of the Executive Council of N.B.

Re petition presented by the Grand Falls Water Power and Boom Company to the Honourable the Minister of Justice, praying for the disallowance of an Act passed by the Legislature of New Brunswick at the Session 1905, intituled: "An Act to Confirm the Charter of the Grand Falls Power Company."

Reply of the Grand Falls Water Power and Boom Company to the answer made by the Attorney General of the Province of New Brunswick to the said petition.

1. The first objection made by the learned Attorney General is that our company should not raise an objection to the competency of the provincial legislature as we had

applied to the New Brunswick legislature in the year 1901 for an Act to confirm the Act passed by the Dominion parliament in the year 1895, incorporating our company. We say, in answer to this argument, that by applying to the Dominion parliament to incorporate our company we recognized then that it alone had the power. We deny that in our application to the New Brunswick legislature for an Act to confirm the Act passed by the Dominion parliament we recognized the powers of the New Brunswick legislature to grant to our company the powers given by the Dominion parliament. We say, on the contrary, that the New Brunswick legislature by passing the Act they did recognized the authority of the Dominion parliament to incorporate our company, and that it was necessary for us to go to the Dominion parliament and get an Act to give us the powers set out in our Act of Incorporation. The reason we went to the New Brunswick legislature was so there would be no question raised as regards jurisdiction.

2. Another objection made by the learned Attorney General is that our company not having expended one hundred and fifty thousand dollars before the first day of March, 1895, the powers given by the Act of Incorporation have lapsed. In reply we say that section 10 of our Act of Incorporation provides that the powers granted to us shall be null and void as respects so much of the said works as then remain uncompleted. Our powers to hold lands and property and to do other things provided for by said Act are still in full force and are not affected by the failure to make said expenditure.

3. In reply to the third answer made by the learned Attorney General that even if the works of The Grand Falls Power Company, incorporated by the New Brunswick legislature as aforesaid do obstruct or impede the navigation of the Saint John River, ample provision for preserving the navigation is provided by requiring the said company to file a plan of its proposed works with the Minister of Public Works, we contend that this is no answer. If the legislature of New Brunswick have no power to authorize a local company to impede or obstruct the navigation of the Saint John river, adding a clause to such an Act that plans of the works are to be approved by the Minister of Public Works would not render such an Act *intra vires*. On the other hand, it would appear to us that the local legislature by passing such a section thereby admitted that they had not power to pass the Act; otherwise, why refer the matter to the Minister of Public Works? In other words, we contend that the local legislature cannot pass an Act authorizing a local company to impede the navigation of a navigable river and make such Act *intra vires* by providing that the works to be constructed under said Act shall meet the approval of the Minister of Public Works.

4. The fourth answer made by the learned Attorney General, namely, that the Ashburton treaty has no bearing upon the subject, is one that needs no reply. The terms of the treaty are clear and well defined and the substance thereof is set out in our petition. Article III of the Ashburton treaty (1842) specially provides that the navigation of the Saint John river shall be free and open to both parties and shall in no way be obstructed by either, and that all the logs, &c., grown on lands in the state of Maine watered by the River Saint John or its tributaries shall have free access through the said river to the seaport at the mouth of the River Saint John. It is only necessary to cite this subsection to fully answer the argument of the learned Attorney General on that point.

5. The fifth answer made by the learned Attorney General to our petition, namely, that the Dominion lands leased to our company are upon the opposite side of the river from where the works of the Grand Falls Power Company are situate, and that it will not be necessary to expropriate these lands might be a good one if our lands were not interfered with by the construction of the works proposed by the said Act. We alleged and stated in the petition, and we now allege and state that the construction of the works proposed by The Grand Falls Power Company, and which they are authorized to execute under the Act of the local legislature would render valueless our leasehold property. We attach hereto a copy of the plan of the lands under lease to

our company. The dotted lines show where the dam is proposed to be constructed. It will be noticed by examining the plan attached that the construction of the works will take away our rights as riparian owners to the use of the water of the river for mills or other purposes and absolutely destroy our rights as riparian proprietors. The copy of the plan attached is a copy of the plan attached to the lease of the lands. The part coloured red is the land leased to our company by the Minister of the Interior. It is not enough for the learned Attorney General to say that The Grand Falls Power Company do not intend to expropriate our lands if the passing of this local Act would authorize them to practically destroy the value of said lands. The objection we urge is, that the construction of these works would absolutely destroy the value of our property, or, in other words, would destroy the property of the Crown leased to us.

6. In reply to the sixth answer made by the learned Attorney General to our petition, viz., that the lease which our company (namely, The Grand Falls Water-Power and Boom Company) have of the ordnance lands was obtained by the said company for the purpose of developing the water-power at Grand Falls upon the assurance that such works would be undertaken by our company, we say that the learned Attorney General is wrongly advised in this matter, as the facts show that the lease from the Queen to Edward Jack and Walter Armstrong was dated the twenty-seventh day of April, A.D., 1894. No such condition stated in the answer of the learned Attorney-General is incorporated in said lease. Our company was incorporated, as stated above, in the year 1895 and the lease above mentioned was assigned to our company on the twentieth day of June, 1898, or four years after it was made. Our company have paid a large sum of money to the said original lessees for the said lease and the assignment of said lease to our company was consented to by the Honourable the Minister of the Interior which consent was indorsed thereon. No representations were made by our company at the time the assignment was made to the Honourable the Minister of the Interior in order to obtain his consent to said assignment, and we are advised that if the inquiry is made it will be found that no such representations were made as stated in the answer of the learned Attorney General.

7. In reply to the seventh answer made by the learned Attorney General as regards the unusual provisions for expropriation given to The Grand Falls Power Company, namely, that such powers are safeguarded by the provision that the consent of the Lieutenant Governor in Council must be obtained and a deposit made with the Receiver General to such an amount as the Lieutenant Governor shall deem necessary. We pointed out in our petition that the actual title to the property is to be vested in the Grand Falls Power Company just as soon as they deposit with the Lieutenant Governor in Council such an amount as the Lieutenant Governor in Council deems necessary. In other words, the Lieutenant Governor in Council fix the damages to be paid to our company. Power is given by the Act for a mortgage to be executed, which mortgage shall be a first charge on the property. Therefore, if our company are awarded damages in excess of the amount deposited with the lieutenant governor there will be practically no remedy to recover same. We say that it is unusual that a private company should have the right to take immediate possession of lands and that no adequate provision is made for the payment of such damages as may be assessed under the terms of the Act. The usual clause is that the amount of damages as assessed shall be a lien on the property until paid. In this case there is no such lien given on the property and the mortgage which will be made and executed would cover the property ahead of our claim.

We, The Grand Falls Water Power and Boom Company, again request that the prayer of the petition of our company shall be granted and that the Act passed by the Legislature of the Province of New Brunswick at its last session being Chapter 17 of 5 Edward VII., intituled "An Act to Confirm the Charter of The Grand Falls Power Company, Limited," may be disallowed, or such of the provisions thereof as authorized works which will interfere with the navigation of the River Saint John or that allow the expropriation of lands owned by His Majesty the King, as represented by the

Minister of the Interior, or that would seriously damage lands held by your petitioner under lease from the Minister of the Interior be disallowed.

Respectfully submitted,

THE GRAND FALLS WATER POWER AND BOOM COMPANY,

By HUGH H. McLEAN,
Vice-President.

(Approved 7 July, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, 5th June, 1906.

To His Excellency the Governor General in Council:

The undersigned, referring to the despatch of the Lieutenant Governor of New Brunswick, dated 14th April last, transmitting certified copies of Orders in Council in relation to the following statutes of the Legislative Assembly of New Brunswick 1905, viz.:—

Chapter 14, intituled: "An Act for the prevention of Fires in connection with surveys and construction of the National Transcontinental Railway and other railways passing through Forest Lands in New Brunswick";

Chapter 17, intituled: "An Act to confirm the charter of the Grand Falls Power Company, Limited"; and

Chapter 84, intituled: "An Act to amend the Act incorporating the Maine and New Brunswick Electrical Power Company, Limited," observes that chapters 14 and 84 having been repealed, no further action devolves upon Your Excellency.

As to chapter 17, it was stated in Mr. Fitzpatrick's report of 16th December last, subsequently approved by Your Excellency, that this Act, among others, might be left to such operation as it might have. After that report was approved, however, a petition was received from the Grand Falls Water Power and Boom Company praying for reasons stated therein, the disallowance of this Act.

By Order in Council of 10th March last attention was drawn particularly to two of the grounds mentioned by the petitioners, viz.: that the effect of the Act is to authorize the expropriation of lands belonging to the Dominion or a leasehold interest in such lands, and that the works authorized by the Act would obstruct or impede the navigation of the St. John river, and by the said Order in Council, copy of the petition was directed to be transmitted to the Lieutenant Governor of New Brunswick for the answer of the government.

Communication was accordingly had with the Lieutenant Governor, and he transmitted by the said despatch of 14th April copy of a memorandum and report of the Attorney General of New Brunswick, approved by the Lieutenant Governor, in reply to the said petition.

Copy of said memorandum and report having been transmitted to the petitioning company a memorandum in reply has been received from the company.

The undersigned has carefully considered the Act in question, and what is alleged against and in support of it, and he sees no sufficient reason to vary the recommendation upon which this Act was left to its operation by the said report of 16th December last.

The Act recites the incorporation of the Grand Falls Water Power Company, Limited, by letters patent of New Brunswick, of 24th March, 1905, a copy of which letters patent is set forth in the schedule to the Act, and confirms the letters patent so recited. The Act provides, moreover, that before commencing the construction of its work the company shall file the plans thereof with the Chief Commissioner of Public Works and obtain the approval of the Lieutenant Governor in Council, and that the company shall also file the plans and a description of the proposed site of the works

with the Minister of Public Works of Canada, and obtain the approval of the Governor in Council of such site and plans, pursuant to the provision of chapter 92 of the Revised Statutes of Canada.

By the letters patent the company is authorized, among other powers, to acquire the water-power at the Grand Falls, and all lands, rights and privileges necessary for the efficient operation of the company; also to develop at Grand Falls hydraulic power and generate electric power, and to deal in power for general commercial and other purposes. It is provided also that the company may construct, maintain and operate a canal and hydraulic raceway at or near Grand Falls, construct works for the development of power, and build such dams, sluices and buildings as are necessary, provided that nothing is to permit of any power being exercised in such a way as to interfere with the driving of logs, lumber and timber in the river, and that notice of submission of the company's plans of proposed works is to be given to the Madawaska Log Driving Company and the St. John River Log Driving Company. The company is also empowered by means of its works aforesaid to supply persons with water, hydraulic, electric or other power for use or for any purpose, by means of wires, cables, &c., and power is given to expropriate lands and water rights, with provisions for compensation.

Several matters are discussed in the petition and in the memorandum of the Attorney General, and in the petitioners' reply, but it appears to the undersigned that the only grounds suggested, upon which, if established, Your Excellency could consistently with the practice in such cases interfere with this Act, are those specially mentioned in the said Order in Council of 10th March last. As to the first of these the Act does not in terms, or by necessary implication, refer to any lands or rights of the Dominion or authorize the expropriation thereof. Therefore, it does not, as the Attorney General points out, authorize the taking of Dominion property. Besides the undersigned denies that a local legislature has authority to authorize the expropriation of the public property of Canada. It is stated, moreover, by the Attorney General that there is no intention to expropriate any property of the Dominion. If any attempt were made to do so the courts would afford adequate means of protection.

As to navigation, the Act affects navigation, if at all, only incidentally, and, in the opinion of the undersigned, satisfactory protection for all the interests of navigation is provided by the provision above referred to, whereby the application of Chapter 92 of the Revised Statutes of Canada is expressly recognized.

It is impossible for Your Excellency in Council to review the legislation upon its merits or to determine whether the rights of the petitioning company have been sufficiently considered or adequately protected. These are matters solely within the authority of the Legislative Assembly.

The undersigned recommends, therefore, that no further action be taken upon the petition, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick, for the information of his government, and to the petitioning company.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

6 EDWARD VII, 1906

(Approved May 15, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, December 15, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislative Assembly of the Province of New Brunswick, passed in the sixth year of His Majesty's

reign (1906), and received by the Secretary of State for Canada on 19th June last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

7 EDWARD VII, 1907

(Approved 2 January, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 12th December, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of New Brunswick, passed in the seventh year of His Majesty's reign, and received by the Secretary of State for Canada on 26th July, 1907, and he is of opinion that these may be left to such operation as they may have.

The undersigned would observe, however, as to Chapter 37, intituled "An Act respecting Telephone Companies"; that the provisions of this Act can only extend to local telephone companies incorporated under the authority of the legislature of New Brunswick. The Act authorizes the expropriation of properties, rights, powers and franchises of any telephone company or companies in the Province, and it requires, amongst other things, that every telephone company or company having authority to charge telephone tolls carrying on business in the Province shall make certain returns, and that the Lieutenant Governor may appoint auditors to examine the books of such companies. Also that the Lieutenant Governor in Council may readjust and alter or vary the tariffs, etc. Such provisions are manifestly incompetent to the legislature so far as concerns companies incorporated by the Dominion. The undersigned assumes that the Act is not intended to apply except to local corporations, and he recommends that the local government consider the propriety of amending the statute so as to expressly limit the application of the Act accordingly.

As to Chapter 50, intituled "An Act to provide for the organization of Fishermen's Unions," it is questionable in the opinion of the undersigned whether the provisions of this Act fall within the legislative competency of the Province. They seem to relate to the subject of sea-coast or inland fisheries rather than to any matter within the jurisdiction of the legislatures. However the undersigned sees no objection to leaving this Act to such operation as it may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

8 EDWARD VII, 1908*(Approved 16 November, 1908.)*

DEPARTMENT OF JUSTICE, OTTAWA, October 16, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of New Brunswick, passed in the Eighth year of His Majesty's reign, 1908, received by the Secretary of State for Canada on 3rd September last, and he is of the opinion that these statutes may be left to such operation as they may have.

As to Chapter 19, intituled "An Act authorizing an inquiry into certain matters connected with the Central Railway Company and the New Brunswick Coal & Railway Company," there has been referred to the undersigned copy of a letter dated 8th June last from the Lieutenant Governor of New Brunswick to the Secretary of State for Canada, transmitting copy of this Act in which the Lieutenant Governor states that he assented to the bill with great hesitation, having grave doubts as to the competency of the Legislature to pass it. His Honour raises several questions as to the validity of the legislation. The undersigned considers, however, that the Lieutenant Governor pursued the proper course in assenting to the bill. The questions which he states as to the validity of the Act are quite capable of being raised and determined in the Courts should occasion arise, and do not, in the view of the undersigned, afford sufficient reason for disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

*Minister of Justice.***9 EDWARD VII, 1909***(Approved 7 March 1910)*

DEPARTMENT OF JUSTICE, OTTAWA, 23rd February, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Acts of the Legislature of New Brunswick, passed in the Ninth year of His Majesty's reign (1909); and received by the Secretary of State for Canada on 17th August last; and he is of opinion that these Acts may be left to such operation as they may have except as hereinafter otherwise recommended:—

Chapter 46, intituled "An Act respecting the Protection of Game".

In recommending that this Act be left to its operation the undersigned reserves the objection that some at least of its provisions appear to relate to criminal law, which is a subject within the exclusive authority of Parliament. The Courts may, however, conveniently consider and determine this objection should it be raised in any prosecution under the Act.

Chapter 58, intituled "An Act authorizing the City of Saint John to build a bridge across the Harbour of Saint John".

This Act, while it may operate to confer capacity upon the Corporation of St John to construct and maintain a bridge across the harbour, cannot give any title

to the City to construct works upon the harbour bed or in or over navigable waters. It is, however, necessary, if the bridge is to be constructed by the City, that the corporate powers of the City should be enlarged accordingly, and in that view the undersigned considers that the Act should be left to its operation, and he presumes of course that the City authorities will obtain the necessary Dominion authority and sanction before proceeding with the work.

Chapter 74, intituled "An Act to incorporate 'International Power Company, Limited'".

By this Act a company is incorporated with power to construct, maintain and operate by electricity or other motive power a line of railway for the passage of cars and other vehicles from Milltown, in the County of Charlotte, to Sprague's Falls; also to construct and maintain a bridge across the St Croix River at or near Sprague's Falls for the purpose of connecting the railway with the opposite shore of the river; also to construct and maintain a dam or dams in the St Croix River at any point between Sprague's Falls and Milltown, with the right of flowage, for the purpose of storing and preserving the waters of the river with lawful and necessary ways for the passage of logs, lumber and fish; also to use the power created by the dam or dams and transmit it by electricity or otherwise to any part of the County of Charlotte, and for this purpose to erect the necessary poles, wires, etc.

Section 15 provides that "For all or any of the purposes mentioned in this Act, the Company may consolidate or unite with any corporation organized for a similar purpose under the authority of any Act of the Legislature of the State of Maine".

The St Croix River is an international stream. The authority of a local legislature with regard to local works and undertakings is by Section 92, Article 10 of the British North America Act, 1867, subject to the exception of railways, works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the Province. Moreover the powers of a local legislature with regard to the constitution of companies are limited by Article 11 of the same section to the incorporation of companies with provincial objects. The construction of a bridge across the St. Croix River, thereby connecting the province with the United States, the building of dams across the said river, and the consolidation or union of International Power Company, Limited, with a corporation organized under the authority of the legislature of the State of Maine are objects which, in the view of the undersigned, cannot be effected by the legislature of New Brunswick. These powers involved the execution of extra-territorial works and objects ultra-provincial.

The undersigned considers, therefore, that the Act ought to be disallowed unless the local Government undertake to repeal the provisions with regard to the bridge and dam upon the St. Croix River and the consolidation of the Company with a corporation constituted by the State of Maine.

Chapter 79, intituled "An Act to amend the Act 3 Edward VII, Chapter 109, intituled 'An Act to incorporate the Aluminum Production Company of New Brunswick, (Limited)', and to change the name thereof to 'The General Oil Shales Company of Canada, Limited'".

By this Act the name of the Aluminum Production Company of New Brunswick, Limited, incorporated by the New Brunswick Act, 3 Edward VII, Cap 109, is changed to the "The General Oil Shales Company of Canada", and further powers are conferred upon the Company.

By the original Act of incorporation of this Company it is enacted that the Company shall have its head office in the Province of New Brunswick, but that it may also have an office in London, or in the City of New York, or in any other place out of Canada as is determined by the by-laws of the Company at which office stock books and transfer books may be opened and kept, and meetings of the Company held, and any other business of the Company transacted. It is provided further that every office in which the Company transacts its business or any portion thereof shall be deemed to be a domicile of the Company.

This original Act unfortunately escaped notice when the predecessor in office of the undersigned was reporting upon the New Brunswick Statutes of 1903, otherwise it would have doubtless been disallowed unless amended by the legislature so as to confine the powers of the Company to provincial objects.

It is, in the opinion of the undersigned, plain that the legislature of New Brunswick has no constitutional power to authorize a company to have offices and transact business out of the Province, and to confer upon the Company a status of foreign domicile.

The Governor in Council did not, however, exercise his power of disallowance with respect to the Act of 1903, and it is now too late to interfere with such operation as that Act may have. The general nature of the powers conferred, coupled with the express provisions purporting to authorize the Company to do business abroad, indicate an intention that the business of the Company is not to be confined to provincial objects. But it is certain, by reason of the constitutional limitation of the legislature, that the said Act cannot confer any powers in respect of objects other than provincial, and it is, therefore, in the opinion of the undersigned, inexpedient that the name of the Company should be changed to "The General Oil Shales Company of Canada, Limited," a title which upon its face is liable to mislead by the suggestion that the Company has Canadian as distinguished from provincial powers.

The undersigned considers, therefore, that the said Chapter 79 of 1909 ought to be disallowed, unless amended within the time limited for disallowance, by striking from the new name of the Company the words "of Canada". Moreover, the undersigned considers that the powers of this Company ought not to be enlarged as provided for by the Act under consideration unless the original Act of incorporation be amended by repealing the powers relating to the establishment of offices and the carrying on of business outside of the Province of New Brunswick.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick, for the information of his Government, and that he be requested to inform Your Excellency immediately as to whether his Government will undertake to have the said Chapters 74 and 79 amended as indicated by this report within the time limited for disallowance.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(Note: The above reported Chap. 79 was accordingly amended by Chap. 80 of 1910.)

(Approved 8 June 1910.)

DEPARTMENT OF JUSTICE, OTTAWA, 7th June, 1910.

To His Excellency the Governor General in Council:

The undersigned referring to the Minute of Your Excellency in Council of 23rd February last with regard to Chapter 74, intituled "An Act to incorporate 'International Power Company, Limited,'" of the Acts of the Legislature of New Brunswick, 1909, has the honour to report that there has been referred to him a despatch, dated 10th ultimo, of the Lieutenant Governor of New Brunswick, enclosing a letter from the Premier of New Brunswick, in which the Premier states that he undertakes at the next session of the Legislature to introduce a bill to repeal the provisions of the said Act with regard to the bridge and dams upon the St. Croix River, and the consolidation of the Company with a corporation constituted by the State of Maine. He adds that the Company has undertaken in the meantime not to do any work under the powers referred to.

The undersigned considering that this undertaking may be regarded as satisfactory recommends that no further action be taken with regard to the said Act, and that the Lieutenant Governor of New Brunswick be informed that in view of the said undertaking the Act will be left to such operation as it may have.

Humbly submitted,

CHAS. MURPHY,
Acting Minister of Justice.

10 EDWARD VII, 1910

(Approved 11 February, 1911.)

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of New Brunswick, passed in the Tenth year of His late Majesty's reign (1910) and received by the Secretary of State for Canada on 9th June last; and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

1 GEORGE V, 1911

(Approved 3 February, 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, 30th January, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of New Brunswick, passed in the first year of His Majesty's reign (1911); and received by the Secretary of State for Canada on 27th April last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 25, intituled "An Act for better enforcing the collection of certain taxes imposed by Chapter 18, Consolidated Statutes, 1903."

It is provided by Chapter 18 of the Consolidated Statutes of New Brunswick, 1903, that upon all companies accepting risks in carrying on the business of insurance against fire a tax shall be levied of one per cent of the net premiums received by each, together with an additional sum of one hundred dollars to be paid by each company, the principal office and organization of which is not within the province.

The present statute recites a growing custom for corporations and firms with head offices outside of New Brunswick to insure their property, situate within the province, against risk of fire through outside agents, and thus to escape the said tax of one per centum of the net premiums imposed by the said Chapter 18. The statute therefore proceeds to require that every fire insurance company having its principal office

or organization outside of New Brunswick shall file with the Receiver General the name of a general agent through whom all its fire insurance business in the province is to be written or reported and who alone shall be authorized to sign or countersign policies, or if the company has no general agent in the province the names of all agents having authority to sign or countersign policies, and that any such agent or agents shall be residents of the province; that no company shall issue any policy unless signed or countersigned by a resident of the province previously named to the Receiver General, and that any company which issues a policy not so signed shall be liable to a penalty. The statute provides, moreover, that any person who adjusts or appraises a loss for or on behalf of any company under a policy not signed or countersigned by a resident of the province named as agent under section 5 shall be liable to a penalty. It is further enacted that the Receiver General may not accept from any company which has been convicted of violation of any of the provisions of this Act taxes for the year commencing the first day of June following the date of such conviction, and that any company from which the Receiver General has refused to accept taxes shall be deemed to be unauthorized to transact business of fire insurance in the province.

The statute seems therefore intended for the purpose of making effective the one per cent tax upon premiums to prevent the contracting of fire insurance policies outside the province in respect of property situate within the province and indirectly to disqualify a company which so contracts from transacting the business of fire insurance within the province.

It appears to the undersigned that these enactments are questionable, either as affecting the regulation of trade and commerce as relating to taxation not within the province, or as affecting matters of a nature not merely private or local in the province.

The undersigned does not, however, consider it necessary on that account to recommend the disallowance of the statute. Any question which may be raised as to the competency of the enacting authority may doubtless be conveniently determined by the Courts.

Chapter 93, intituled "An Act to incorporate 'The New Brunswick Trust Company.'"

The powers conferred upon this company include, among others, "the power to receive money on deposit and to allow interest on the same."

This appears to be a power relating to banking which may be beyond the power of the legislature to confer upon a trust company.

The undersigned does not consider it necessary, however, to do more than call attention to the question which may exist as to the power of the legislature to confer such a power.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

2 GEORGE V, 1912

(Approved 27 March, 1913)

DEPARTMENT OF JUSTICE, OTTAWA, 24th March, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of New Brunswick, passed in the second year of His Majesty's reign (1912), and

received by the Secretary of State for Canada on 6th August last; and he is of opinion that these statutes may be left to such operation as they may have except as hereinafter stated.

Chapter XVIII, intituled "An Act to confirm an Agreement between the Saint John and Quebec Railway Company and the Governments of Canada and New Brunswick, and to further amend 10 Edward VII, Chapter 52, intituled 'An Act to incorporate the Saint John and Quebec Railway Company.'"

This Act recites an agreement of 5th March, 1912, between the Dominion Government, the Provincial Government and the St. John and Quebec Railway Company, confirmed by Act of Parliament, and the local Act proceeds also to confirm the said agreement. It further amends the Act of New Brunswick 10 Edward VII, Chapter 52, intituled "An Act to incorporate the Saint John and Quebec Railway Company," and it adds to the said Act the following sections:—

"18. No person shall after the passing of this amending Act be a director of the Company, unless he is a shareholder holding fifty shares of stock in the Company, which have been paid in cash and not otherwise to the extent of the full par value thereof.

"19. The issued shares of the Company which on the tenth day of April, A.D. 1912, had been fully paid up to the extent of the par value thereof in cash and not otherwise shall on the date of the passing of this amending Act, constitute the whole of the issued shares of the Company, and the holders thereof, together with such other persons as may after the date of the passing of this amending Act become shareholders in the Company, shall constitute the Company, and all other shares, if any, issued prior to the passing of this amending Act, and all subscriptions, allotments and certificates of or for shares heretofore given, made or issued which had not, prior to the said tenth day of April, been wholly or partly paid in cash and not otherwise as well as all rights and claims of all persons in or against the Company in respect thereof, are hereby cancelled and declared to be and shall be null and void.

"20. No certificate or proprietorship of a share, whether heretofore or hereafter issued, shall be valid or binding upon the Company, unless and until in addition to the signatures of the proper signing officers it is also countersigned by the Treasurer or Assistant Treasurer of the Company or by a Registrar of Transfers in manner and form as may be prescribed by the by-laws of the Company".

James D. Seely, of St. John, Merchant, and others, have petitioned for the disallowance of this Act as stockholders of the St. John and Quebec Railway Company, upon the ground that the statute operates to cancel their stock without their knowledge or consent; that the bill was introduced and passed without notice to the petitioners, and that it was promoted by misrepresentation and fraud.

Upon reference of the petition of Mr. Seely and his co-petitioners to the Lieutenant Governor of New Brunswick, the Attorney General transmits statutory declarations of Messrs. Ross Thompson, A. R. Gould and F. J. Lisman, officers of the Company, in answer to the statements of the petition, and he says that he has advised the Lieutenant Governor that in his opinion "the Legislature was strictly within its rights and powers, under the British North America Act, in passing the legislation referred to, which it has full power and authority to do, and that the legislation was presented, considered and passed upon in the usual way that all legislation is considered and passed upon by the General Assembly of this Province".

In these circumstances the undersigned does not consider that Your Royal Highness should review the proceedings of the House of Assembly.

There is a long discussion in the papers on the situation with regard to the petitioners' stock. While the Act appears to be within the constitutional powers of the

legislature, the undersigned does not consider that the transfer or cancellation of private rights without notice or compensation is an appropriate sphere of legislative activity, and he reported in another case that circumstances might arise which would justify the exercise of the powers appertaining to Your Royal Highness to prevent irremediable wrong or injustice legislatively sanctioned by a province. It seems difficult to escape the conclusion upon consideration of the facts as stated that the provisions above quoted operate to deprive the petitioners or some of them of certain rights which they had in the constitution of the St. John and Quebec Railway Company. Your Royal Highness's Government has, however, no means of trying any question of merits as between the petitioners and the promoters of the legislation, and the undersigned is not satisfied upon an attentive examination of the evidence submitted that any such grievance or case of injustice or hardship is made to appear as would justify Your Royal Highness in exercising the power of disallowance.

Chapter LXVIII, intituled "An Act to Incorporate The New Brunswick Hydro Electric Company".

This Act authorizes the Company to acquire and utilize lands and water powers on the Lapreaux River and the Magaguadavic River, and their tributaries, for electric power purposes, and "to construct dams and reservoirs and pen back the waters of the said rivers and waters tributary thereto, so as to utilize the same, and regulate and make uniform the flow thereof, and in so doing the company shall permit to pass down the Magaguadavic in the channel and to the mouth thereof, the largest uniform flow of water practicable".

Chapter CIX, intituled "An Act to incorporate the Saint John River Hydro-Electric Company".

This Act authorizes the Company, among other things, to acquire water powers on the St. John River, in the County of York; to construct and maintain a dam across the river at a height not exceeding twenty-five feet above low water mark at a point between the mouth of Shogomoc Stream and the mouth of the Pokiok Stream, and to acquire and construct canals, raceways, etc. It is provided by section 7 that the Company shall at all times during the open season of navigation maintain and operate at its own expense in the said dam across the said Saint John River,

"(a) Fit and sufficient sluices, slides, passages and gates for the transmission or passage down stream of square timber, saw-logs or other lumber, whether loose or in rafts, which may require to be driven or floated down stream;

"(b) A sufficiently large lock or locks, with efficient gates to admit of the passage up and down stream of all sailing boats, motor boats, steamboats, scows, row-boats, canoes and other vessels navigating the waters or the said Saint John River".

Objection has been made to this Act on behalf of the Board of Trade of the City of St. John urging that it conflicts with the Ashburton Treaty, and that it is *ultra vires* as affecting navigation; moreover that the proposed works will interfere with the salmon fishery.

Upon reference of this memorial to the Lieutenant Governor of New Brunswick, the Attorney General submits a reply from the Company in which it is stated that the site of the proposed dam as defined by the Act is wholly within the Province of New Brunswick and not on any portion of the river forming the boundary between the Province of New Brunswick and the State of Maine. The Company argues that the works will not obstruct navigation but admit their obligation to comply with the Navigable Waters Protection Act. The question of the salmon fishery is also discussed.

It appears to the undersigned that these two Acts, Chapters 68 and 109, are of the same character. They are statutes incorporating companies with provincial objects. The effect is to confer capacity upon these companies to execute the objects for which they were incorporated consistently with the general laws. Adequate protection for all

public interests is provided by the navigation and fishery laws of the Dominion, and the Acts do not profess to exempt the companies from compliance with these laws. It would of course be incompetent to the province to authorize any such exemption. The maintenance of treaty rights is also a matter within the jurisdiction of the Dominion.

The undersigned is therefore unable to perceive any reason for the disallowance of either of these statutes. They cannot in themselves prejudice any of the interests which the Board of Trade of the City of St. John desire to protect, but it will be for Your Royal Highness's advisers to consider whether the works which the companies propose when they are proposed may be approved consistently with the public interest.

Chapter LXXII, intituled "An Act to incorporate the North Shore Railway and Navigation Company, Limited."

This Act incorporates a company with its head office at the Town of Essex, but provides that meetings of the directors of the Company may be held outside of the Province of New Brunswick.

The undersigned doubts the power of the legislature to authorize the directors to hold meetings outside of the province.

The Company is authorized to construct a local railway "provided that this line of railway is constructed so as to touch the Town of Rexton, in Kent County, and maintain a passenger and freight station there, and the company is hereby authorized and empowered to construct and to operate a car and passenger ferry, from the terminal of the said line of railway, at Richibucto Head, to connect with Prince Edward Island, at or near a point called Cape Wolfe or West Point, and the said company shall be and they are hereby vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this Act, as herein set forth."

This power of constructing and operating a car and passenger ferry between New Brunswick and Prince Edward Island is expressly excluded from provincial authority by the tenth enumeration of section 92 of the British North America Act, 1867, which limits the legislative authority of a province to such local works and undertakings as do not connect two provinces or extend beyond the limits of a province. Moreover by the thirteenth enumeration of section 91 "ferries between two provinces" are within the exclusive legislative jurisdiction of the Parliament of Canada.

This Act is therefore plainly *ultra vires* in respect of the ferry project, and the undersigned recommends a communication to the Lieutenant Governor of New Brunswick to ascertain whether the provision above quoted will be repealed within the time limited for disallowance.

Chapter LXXXVII, intituled "An Act to confer certain privileges and franchises upon the Maine Central Railway Company."

This Act recites in effect that the Maine Central Railroad Company has acquired the railway of the Saint Croix and Penobscot Railroad Company, which is apparently a local railway situated in the Parish of St. Stephen, County of Charlotte, Province of New Brunswick, along the Saint Croix River. The Act proceeds to incorporate the Maine Central Railroad Company, and to transfer to the said Company the franchises, rights, etc., of the St. Croix and Penobscot Railroad Company as acquired from the latter Company by the Washington County Railway Company.

It is further provided that the Maine Central Railroad Company shall be subject in all respects "in so far as pertains to that portion of its railway which is located in the Parish of St. Stephen in the County of Charlotte, to all the provisions of 'The New Brunswick Railway Act,' in so far as the same may be applicable to the said line of railway, and that the company shall maintain an office in the Parish of Saint Stephen, where legal processes may be served."

It is in the opinion of the undersigned very questionable whether this incorporation of the Maine Central Railroad Company, which is a foreign company, with reference to a local railway in New Brunswick, is for provincial objects within the meaning of the eleventh enumeration of section 92 of the British North America Act, 1867. It

is doubtful moreover whether this legislation is not incompetent to the legislature as excepted from provincial authority by the tenth section of the enumeration in section 92 of the British North America Act, 1867.

The undersigned is not, however, disposed to recommend the disallowance of this Act.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick, and that his attention be especially called to the enquiry with respect to Chapter 72 incorporating the North Shore Railway and Navigation Company.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

3 GEORGE V, 1913

(Approved 27 November, 1913.)

DEPARTMENT OF JUSTICE, OTTAWA, 14th November, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of New Brunswick, passed in the third year of His Majesty's reign, 1913, and received by the Secretary of State for Canada on 7th May last; and he is of opinion that these statutes may be left to such operation as they may have.

Chapter 110, intituled "An Act respecting 'The Dominion Trust Company.'"

This Act recites that the Company was incorporated by Act of the Parliament of Canada, Chapter 89, of 1912, and it proceeds to enact that the Company "is hereby recognized as and declared to be a corporation, with all the rights, powers and privileges extending to corporations incorporated by the laws of the Province of New Brunswick, and is hereby authorized and empowered to carry on and exercise, in the Province of New Brunswick, the same business and powers as under the said recited Act it is authorized and empowered to carry on and exercise in the Dominion of Canada and to the like extent; and as if the company had been incorporated for such corporate purposes under the provisions of a statute of this Province."

It is further enacted by section 12 that the company shall have certain special powers therein enumerated, among others, to receive money on deposit, and to allow interest on the same; and by section 13 the company is empowered, if authorized by by-law to borrow money and hypothecate and pledge its property.

The intention of this statute seems to be somewhat doubtful. If it be intended to create a new corporation within the Province of New Brunswick, the legislation may doubtless operate in so far as the powers conferred are *intra vires* of the legislature. If, however, it be intended to confer by provincial authority fresh powers upon a Dominion corporation, the undersigned entertains very serious doubts as to the enacting authority of the legislature.

The undersigned apprehends that the company may execute its powers conferred by the Parliament of Canada within the province without any enabling or additional legislation, except possibly as may be necessary to remove any impediments which may exist by the general laws of the province. It seems very difficult to suppose that the legislature of New Brunswick may confer additional powers upon a Dominion company or enable it to borrow money.

Moreover the power to receive money on deposit and to allow interest upon the same seems to have relation to banking powers which are wholly withdrawn from the legislature.

Some of the questions suggested by the consideration of this Act are, however, now pending before the courts and they may be judicially determined in pending or other cases as they may arise. The undersigned does not therefore consider it necessary to make any further recommendation with regard to this statute.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

4 GEORGE V, 1914

(Approved 3 December, 1914.)

DEPARTMENT OF JUSTICE, CANADA,
OTTAWA, 26th November, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of New Brunswick passed in the fourth year of His Majesty's reign (1914), and received by the Secretary of State for Canada on the 16th July, 1914, and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

5 GEORGE V, 1915

(Approved 26 August, 1916.)

16th August, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of New Brunswick, passed in the fifth year of His Majesty's reign (1915), and received by the Secretary of State for Canada on 16th August, 1915, and he is of opinion that these statutes may be left to such operation as they may have.

There was a petition presented by Augustus H. Hanington, K.C., and others, praying for the disallowance of Chapter 9, intituled "An Act respecting the St. John and Quebec Railway Company," upon grounds which were concerned with the justice of the legislation as affecting the interests of the petitioners, and there was some correspondence between the Deputy Minister of Justice and the Attorney General of New Brunswick upon the subject. The petitioners, however, by a memorandum of 17th December last, notified the Secretary of State that the matters in question had been settled and adjusted; that they did not desire any further pro-

ceedings taken under the said petition, and that they withdrew the petition, consequently it becomes unnecessary for the undersigned to review the objections raised by the petition.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of New Brunswick, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

NOTE.—The above-mentioned Act, chap. 9, came under review of the New Brunswick Supreme Court in the case of *St. John and Quebec R. Co. v. Jones et al*, 57 D.L.R. 477, where the validity of the Act was unsuccessfully attacked.

1916, 1917, 1918

Reports on Statutes for the years 1916, 1917 and 1918 for New Brunswick approved by the Governor in Council contain no comments: the Statutes are left to such operation as they may have.

9 GEORGE V, 1919

(Approved 5 February 1920.)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 13th January, 1920.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of New Brunswick, passed in the ninth year of His Majesty's reign, 1919, and received by the Secretary of State for Canada on the 28th July, 1919; and he is of opinion that these statutes may be left to such operation as they may have.

A petition has been addressed to Your Excellency in Council by the bondholders of the Caraquet and Gulf Shore Railway praying for the disallowance of Chapter 17, entitled "An Act relating to Provincial Railways." This Act provides for the regulation under the authority of the Lieutenant Governor in Council of tolls taken by provincial railways. It authorizes the Lieutenant Governor, upon report of the Minister of Public Works, after investigation, to order that provision be made for proper maintenance and operation, and to order repairs and reconstruction. It authorizes the Lieutenant Governor in Council to require an efficient daily service, and it provides that in the event of failure on behalf of the company to comply with orders of the Lieutenant Governor in Council in that behalf the necessary works may be performed under the direction of the Minister of Public Works at the cost of the Company, and that in the event of the revenues of the Company available being insufficient to provide the cost of such works the same may be paid out of provincial revenues, and shall become a first charge upon the railway, and that the Lieutenant Governor in Council may direct sale of the railway to satisfy the charges, the proceeds, after payment of the provincial claim, to be distributed under the direction of a judge of the Supreme Court.

The bondholders complain that this legislation is "drastic, unjust and confiscatory," and prejudicial in the last degree to the rights of the bondholders, and as well that it is discouraging to the general project of investment in Canadian securities.

A copy of the petition was referred to the Lieutenant Governor of New Brunswick for his report, and the Attorney General of the Province has submitted his observations in reply on behalf of the Provincial Government. Copy of the petition and of the answer of the Attorney General is submitted herewith.

The Attorney General states that the Caraquet and Gulf Shore Railway received aid for construction from the Provincial Government at the rate of \$3,000.00 per mile, and that the subsidy was granted upon terms that the Company would equip the railway and keep and maintain the same in good working order, and operate it in a manner to accommodate the public upon the whole line, and he observes that "the Act complained of only provides, and was intended to provide, for the enforcement of the undertaking made by these companies or their predecessors in office on accepting the subsidies to afford a safe and proper service," in which undertaking it is alleged that the Caraquet and Gulf Shore Railway has persistently failed.

The railway is a local work within the exclusive authority of the legislature, and the complaint upon which the petition is founded proceeds mainly upon the view that it is unjust to the bondholders that the provincial powers conferred by the Act should be exercised in a manner to create charges and a power of sale antecedent to the rights of the bondholders.

Upon this question the obligation incurred by the Company in consideration of the provincial grant to which the Attorney General refers is a pertinent consideration, and the undersigned conceives that in the circumstances of the case the question of remedy for failure to operate or inefficiency of the service carried out by the Company may be determined by provincial authority, and that any reasonable legislative measure designed for the purpose ought not to be disallowed. It is not to be assumed that the powers conferred by the Act in question will be exercised arbitrarily or in an unreasonable or oppressive manner, and the undersigned does not consider, in view of all the circumstances, that a case has been established for the exercise of the power of disallowance with respect to this Act, which is intended to regulate merely private or local matters within the undoubted legislative authority of the Province.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province of New Brunswick, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

PETITION FOR DISALLOWANCE

*of an Act relating to Provincial Railways which was passed by the Legislative Assembly of New Brunswick and received the Royal Assent on April Fifteenth, 1919.
9 Geo. V, Cap. 17.*

To His Excellency the Governor General in Council:

The humble Petition of the Bondholders of the Caraquet and Gulf Shore Railway, having its Head Office at the Town of Bathurst, in the County of Gloucester and Province of New Brunswick,

SHEWETH,—

1. That the Caraquet Railway was a Corporation incorporated in 1874 by Statute of New Brunswick 37 Vict., Cap. 76, and The Gulf Shore Railway was a Corporation incorporated in 1894 by Statute of New Brunswick 57 Vict., Cap. 73, and both of said Railways were amalgamated in the year 1905 by Statute of New Brunswick 5 Ed. VII, Caps. 81 and 92, and is now a Corporation known as The Caraquet and Gulf Shore Railway and your Petitioners are its bond holders.

2. That the outstanding capital stock of the said Railway Corporation is \$1,250,000, and the bonds outstanding and unpaid against said Railway Corporation are \$500,000, and are held by your Petitioners, and other miscellaneous obligations outstanding and unpaid against said Railway as of the 30th day of November, 1918, amount to \$74,127.69.

3. The Caraquet Railway extended from Gloucester Junction with the Inter-colonial Railway thence northerly five miles to Bathurst Station and thence easterly along the southern shore of Chaleur Bay to Shippegan Harbour, having a length in all of 68 miles, exclusive of spurs and sidings, and The Gulf Shore Railway made a junction with the Caraquet Railway at Pokemouche Junction and extended southerly along the western shore of the Gulf of St. Lawrence to Tracadie, having a length in all of 16.78 miles, exclusive of spurs and sidings, and both the said Railways are now owned in fee simple and operated by said Railway Corporation.

4. That no dividends at any time have been paid upon the outstanding stock of said Railway Corporation and no interest has ever been paid to your Petitioners upon the bonds outstanding against said Railway and the net earnings of the said Railway have from time to time been expended in betterments and improvements to the said Railway.

5. That the net earnings of the said Railway from the 30th of June, 1918, to the 30th day of April, 1919, amount to the sum of \$23,294, which has and is being spent in betterments and improvements to said Railway.

6. That the chief bond holders of the said Railway Corporation and its chief stock holders reside in the Province of Ontario and in the United States of America.

7. The majority of the bonds of the said Railway is held by Trustees who have no power or authority to lawfully make a further investment in the securities of said Railway Corporation.

8. That the shareholders of said Railway Corporation and your Petitioners, the bond holders thereof, have been and are ready and willing at any time to sell said Railway undertaking either to the Dominion or Provincial Government at a fair and reasonable price or in the event of disagreement as to price to have the same determined by any impartial tribunal that would be to the entire satisfaction of either Government.

9. That an Act relating to Provincial Railways and known as 9 Geo. V, Cap. 17, was passed by the Legislative Assembly of New Brunswick and received the Royal Assent on the 15th day of April, A.D. 1919, and is in the words and figures following, that is to say,—

"An Act relating to Provincial Railways"

Be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:—

1. Notwithstanding anything contained in any charter of any Provincial railway, or in any Act in addition to or in amendment of any such charter, or in Chapter 91 of the Consolidated Statutes, 1903, or in any other Act of Assembly relating to railways operating under a provincial charter, the tolls or tariff of fees levied or taken by any such railway company shall, from and after the passing of this Act, be subject to revision, alteration and amendment by the Lieutenant-Governor in Council or by the Board of Railway Commissioners for Canada, if the Lieutenant-Governor in Council shall so order. A copy of any order made by the Lieutenant-Governor in Council, or by the Board of Railway Commissioners for Canada, revising, altering or amending any such toll or tariff of fees shall be served on the Railway Company affected by such order, and a copy of such order shall be published in two consecutive issues of the Royal Gazette. Any railway company exacting any toll or fee contrary to the provisions of such order, or failing to comply with the terms thereof, shall be liable to a penalty of not less than fifty dollars and not more than one hundred dollars for each offence, recoverable with costs in any court of competent jurisdiction, in the name of the Minister of Public Works.

2. From and after the passing of this Act, no toll or tariff of fees shall be made, fixed, altered or amended by any railway company operating under any

provincial charter until and unless the same shall be first approved by order of the Lieutenant-Governor in Council, or of the Board of Railway Commissioners for Canada if referred to them by the Lieutenant Governor in Council, for approval; such approval to be notified by publication of notice of such approval in two consecutive issues of the Royal Gazette. If any such railway company shall exact any toll or fee not so approved, it shall be liable to a penalty of not less than one hundred dollars and not more than four hundred dollars for each offence, recoverable with costs, under the Act respecting Summary Convictions, being Chapter 123 of the Consolidated Statutes, 1903, or in any other court of competent jurisdiction, in the name of the Minister of Public Works.

3. If, at any time, it shall appear to the Minister of Public Works that a railway company operating as aforesaid is not providing proper, safe or adequate service for the public, the Minister of Public Works may cause an investigation to be had as to such service and as to the cause of any failure to provide such proper and adequate service. If on such investigation it is found that such railway company has failed to provide such service as the Minister of Public Works may deem proper and necessary, either from lack of proper maintenance facilities, or lack of proper equipment in the matter of engines, rolling stock, train and section crews, or defect in the bridges, culverts or any other portion of the road, the Lieutenant-Governor in Council shall have power to order that provision be forthwith made for proper maintenance facilities, together with a sufficient number of engines, snow-ploughs, rolling stock of all kinds, train and section crews, for furnishing the public of the district served by such railway with reasonable necessary and adequate service.

4. If it be found, on such investigation, that the failure to provide proper service to the public is caused in whole or in part by the bridges, culverts or any other portion of the roadbed of such railway being in such a condition that freight or passenger traffic is not handled in as expeditious and safe a manner as the same should reasonably be, the Lieutenant-Governor in Council shall have power to order the reconstruction or repair of any such bridge or culvert or any portion of the roadbed which he may deem necessary for the safe and expeditious transportation of freight and passengers.

5. The Minister of Public Works shall give fifteen days' notice to the railway company affected by his findings under Sections 3 and 4 of this Act, setting forth specifically what the Lieutenant-Governor in Council requires to be done by such railway company, and the time within which such work shall be begun and completed, and any railway company failing to comply with the terms of any order made under Sections 3 or 4 of this Act shall be subject to a penalty of not less than one hundred dollars and not more than two hundred dollars for each day in respect of which such order is not complied with, such penalty to be recovered with costs under the Act Respecting Summary Convictions, being Chapter 123 of the Consolidated Statutes, 1903, or in any other court of competent jurisdiction, in the name of the Minister of Public Works.

6. If any railway company fails to give regular daily service between all points touched by such railway the Lieutenant-Governor in Council may cause an investigation to be had as to the reason for such failure to provide such daily service, after the said company has been given due notice of the intention to hold such investigation, and the said railway company shall have the right to be represented at such investigation, and to show cause why such daily service should not be given. If after hearing the parties the Lieutenant-Governor in Council decides that such daily service, or any other service other than then provided should be given, the said company shall be notified of such decision. Upon receipt of the decision of the Lieutenant-Governor in Council the said company shall within ten days thereafter, put into effect the service so ordered

by the Lieutenant-Governor in Council. Any railway company failing to comply with any such order shall be subject to a penalty of not less than fifty dollars and not more than one hundred dollars for each day in respect of which such order is not complied with, to be recovered with costs under the Act Respecting Summary Convictions, being Chapter 123 of the Consolidated Statutes, 1903, or in any other court of competent jurisdiction, in the name of the Minister of Public Works.

7. In case of the failure of any railway company to carry out any order of the Lieutenant-Governor in Council made under sections 3 or 4 of this Act notwithstanding that a fine may have been imposed and collected for such failure, the said Minister of Public Works may have such work done under his supervision and the costs of the same paid out of the revenue of the defaulting company. In case there be not sufficient revenue or it be not available to pay for such work, then the same or any balance remaining unpaid may be paid out of the revenue of the Province and shall be a first lien upon the railway and property of the defaulting company and the Lieutenant-Governor in Council may, by Order in Council, upon such terms and conditions as the said order may direct, authorize the Minister of Public Works to sell the said railway and property to satisfy such lien and the costs and charges of enforcing the same. Upon such sale being made the said Minister of Public Works is hereby authorized to execute a good and sufficient conveyance to the purchaser or purchasers thereof free and clear of all liens, mortgages or incumbrances thereon. Out of the proceeds of any such sale the Minister of Public Works shall first pay and discharge the lien created by this Act and the costs incident to enforcing the same and shall then pay the balance into court to the credit of the Provincial Secretary-Treasurer to be paid out and distributed under an order of a judge of the Supreme Court to the party or parties, firm or firms, corporation or corporations entitled thereto.

8. This Act shall in no way be made applicable to any street railway.

10. That the said Act is so drastic, unjust and confiscatory in its scope and character as to destroy the selling value of the bonds of said Railway held by your Petitioners and to render valueless the assets held by the said Trustees in said bonds.

11. That the said Act is so drastic, unjust and confiscatory in its scope and character that no investor either foreign or domestic can or could be induced on any terms or conditions to loan to said Railway Corporation on first mortgage bonds on all its assets the necessary funds required for betterments, replacements and improvements to said Railway and to bring it up to a higher standard and for the same reason no purchaser either foreign or domestic can or could be induced to purchase said Railway freed and discharged of all liability on the bonds held by your Petitioners.

12. That whilst the said Act is drawn so as to apply to all railways in New Brunswick operating under Provincial Charters the express object in the Legislative Assembly when the Act was under consideration was to force your Petitioners to bring this Railway up to a higher standard of efficiency and to force it to comply with the provisions contained in the said Act, which speaks for itself.

13. That the very object the Legislative Assembly had in view in passing said Act is made impossible for your Petitioners or the said Railway Corporation to carry out, by reason of the drastic, unjust and confiscatory scope and character of the alternative remedies provided in Sections 5, 6 and 7 of the said Act and more particularly in the 7th Section thereof.

14. That the 7th Section of the said Act expressly authorizes the Honourable the Minister of Public Works of New Brunswick to enter upon your Petitioners' property against their will; to expend such sums of money as the Lieutenant-Governor in Council may see fit to authorize to be spent in betterments, replacements and equipment; to claim a first lien and a first charge on all the property of said Railway Cor-

poration; to oust and deprive your Petitioners of their rights as first mortgagees of said Railway; and in default of payment of such lien and charge so created by the Honourable the Minister of Public Works to sell the property of said Railway Corporation without any regard to the rights of your Petitioners as first mortgagees and bond holders at an inevitably great sacrifice to some purchaser who would be subjected to the provisions of the same drastic, unjust and confiscatory Act and who would thereby be discouraged to buy said Railway undertaking even at any price.

15. Your Petitioners humbly submit that the real logical effect of said Act will be to take away all their security as bond holders of said Railway Corporation without compensation and with such refined pretention as to shock the conscience of all honourable men and to shake the confidence of foreign and domestic investors in Canadian securities.

16. Your Petitioners further humbly submit in the events that have happened that their only chance of escape from having all their securities as bond holders of said Railway Corporation being taken away and destroyed as a result of the drastic, unjust and confiscatory scope and character of the said Act is to humbly pray that your Excellency may be pleased to exercise your powers of disallowance of the said Act.

17. Your Petitioners further humbly submit that the power of disallowance under Sections 56 and 90 of the British North America Act was vested in your Excellency for the very purpose of being exercised to prevent injustice and for the protection of private rights and stability of contracts which might be affected by hasty and ill-considered legislation by Provincial Assemblies. Such was the view of the Imperial authorities when the Act of Confederation was passed and such was the view of the Fathers of Confederation. The late Sir John Macdonald asserted "that the power of disallowance was intended to be exercised whenever the Provincial Act contained any provision inconsistent with the safety, honour or welfare of the Dominion; as, for instance, repudiation of a Provincial obligation or contract or any provision inconsistent with justice or morality." (25 C.L.J., p. 560.)

18. Your Petitioners further humbly submit that the decisions of His Majesty's learned Judges have decided that your Petitioners' only remedy lies in humbly praying for the disallowance of the said Act. The Honourable Mr. Justice Riddell in *Florence Mining Co. vs. Cobalt Lake Mining Co.*, 12 O.W.R., at page 300, says:—

"Within the jurisdiction given the legislature of the Province, no power can interfere with the legislature, except of course the Dominion authorities, which interference may occasion disallowance. There is no need of speaking of the paramount power of the Imperial Parliament.

"In short, the legislature, within its jurisdiction can do everything that is not naturally impossible, and is restrained by no rule, human or divine. If it be that the plaintiffs acquired any rights—which I am far from finding—the legislature has the power to take them away. The prohibition 'Thou shalt not steal' has no legal force upon the sovereign body, and there would be no necessity for compensation to be given—we have no such restriction upon the power of the legislature as is found in some states."

19. Your Petitioners further submit and adopt the language of the learned Editor of the Canada Law Journal, 44 C.L.J., p. 559:—

"The numerous judgments recently given which uphold the doctrine that there is no appeal from the action of a Provincial Legislature, so long as it confines itself to subjects committed to it by the B.N.A. Act, has created a widespread feeling of alarm among men concerned with financial affairs. The well-grounded idea that the rights of property are less secure in Canada than in the United States and in Great Britain, or, as one eminent financier puts it, than even in Mexico, is not calculated to encourage the flow of capital to this country. On the contrary it puts us at a decided disadvantage as regards every

kind of investment and industrial enterprise. The capitalist looking for investments sees that in the United States State Legislatures are not allowed to 'make or enforce any law which shall prejudice the privileges or immunities of the citizens of the United States nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the protection of the laws.' Coming to this country he finds that the courts have concluded contrary to the plain intention of the framers of our constitution that in dealing with the rights of property, concerning which they have exclusive jurisdiction, our Provincial legislators are not bound to regard either the provisions of Magna Charta or that still earlier code—the Ten Commandments."

20. It is further humbly submitted that the general principles involved respecting the exercise of the power of disallowance are correctly set forth by the Hon. C. J. Doherty, Minister of Justice, as follows:—

"It is true, as has been frequently pointed out, that it is very difficult for the government of the Dominion, acting through the Governor General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights affected and this is manifest not only by expressions in reports of the ministers, but also by the fact that but a single instance is cited in which the Governor General has exercised the power upon these grounds alone. The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes *intra vires* of the legislature." (48 C.L.J., p. 179.)

21. And it is lastly humbly submitted that since the Hon. C. J. Doherty laid down these general principles, the debts and obligations of the Dominion of Canada and her several Provinces and of all the Municipalities of each Province have enormously increased and the financial, industrial and commercial obligations of Canadians to investors of the United States of America have increased on an unprecedented scale. Hence the outworn theory, that any Province of the Dominion has a right within its jurisdiction to pass legislation that is drastic, unjust and confiscatory in its scope and character, should not be allowed to prevail to the great injury of Canada's credit and national honour; that legislation which is placed on the Statute book by a Legislative Assembly should be founded upon just principles; that it is an increasing national necessity that full and complete justice should be meted out in dealing with foreign and domestic investors whether it be in Railway, Municipal or Provincial securities or Victory Bonds or otherwise; and that duty and honour as well as interest require Canadians to act in accordance with the precept that righteousness exalts a nation and brings prosperity and happiness to its people.

Your Petitioners therefore humbly pray, that Your Excellency the Governor-General in Council may be pleased to disallow said Act relating to Provincial Railways which was passed by the Legislative Assembly of New Brunswick and received the Royal Assent on April fifteenth, 1919, and is known as Statute of New Brunswick 9 Geo. V, Cap. 17.

And your Petitioners as in duty bound will ever pray, etc.

Dated this 16th day of June, A.D. 1919.

J. M. GIBSON,

Hamilton, Ontario,

On behalf of the Bond holders residing in the
Dominion of Canada.

C. E. RITCHIE,

Akron, Ohio, U.S.A.,

On behalf of the Bond holders residing in the
United States of America.

To His Excellency the Governor General in Council.

The Bond-holders of the Caraquet & Gulf Shore Railway, having prayed for the disallowance of the Act 9 Geo. V, Cap. 17, "An Act relating to Provincial Railways", which was passed by the Legislative Assembly of New Brunswick and assented to by His Honour the Lieutenant-Governor on the 15th day of April, A.D. 1919, the Province of New Brunswick in answer thereto,

HUMBLY SHOWS:

That the Caraquet & Gulf Shore Railway is located in the County of Gloucester in the Province of New Brunswick. The Caraquet Railway was first incorporated by Act of the Provincial Legislature in 1874. That Act having expired, it was revived April 18th, 1878 and further revived on the 6th day of April, 1882 by 45 Victoria Chapter 18. Construction was commenced in 1882 and the railway was opened for traffic to Shippegan, its eastern terminus, in 1886. The Caraquet Railway taps the Intercolonial Railway at Gloucester Junction which is situate five miles south of Bathurst Station. From Gloucester Junction the railway runs generally in an easterly direction to a point about half a mile from the Town of Bathurst. At this town there is a "Y" and a spur line running down the bank of the Nepisiguit River to a point where the public highway crosses Nepisiguit River. Here is located the Bathurst Station. From the "Y" above mentioned the line continues in an easterly direction following close to the Bay Shore until Grand Anse is reached. At Grand Anse the line turns towards the south and again strikes the Bay Shore at Upper Caraquet and from this point closely follows the highway road to the Village of Caraquet, 50 miles from Gloucester Junction. Continuing in an easterly direction through the Parish of Caraquet the Railway reaches Pokemouche Junction, 60 miles from Gloucester Junction. From Pokemouche Junction the original Caraquet Railway continues on to Shippegan, its eastern terminus. About twenty-three years ago a branch line was constructed from Pokemouche Junction in a south westerly direction to Tracadie. This branch is called the Gulf Shore Railway. The length of the original Caraquet Railway from Gloucester Junction to Shippegan is 70 miles. The length of the Gulf Shore Railway from Pokemouche Junction to Tracadie Mills is 18 miles, making a total of 88 miles of railway. The construction of the Gulf Shore Railway was commenced in 1894, and was open to traffic to Tracadie, its terminus, in 1896. The Railways were amalgamated in 1911 by 1 George V, Chapter 122. The Caraquet Railway and the Gulf Shore Railway received aid from the Provincial Government to the extent of \$3,000 per mile. These subsidies were granted to roads of the character of the Caraquet and Gulf Shore Railway under contract with the Government of New Brunswick by which the Company agreed to accept the aid and to construct the road and operate the same so as to afford safe and reasonable railway facilities to the public in the district through which it passes. Under the terms of the contract entered into between Her Majesty the Queen and the Railway Company, as by reference thereto will fully appear, the Company agrees after constructing the road to equip the said line of railway and to keep and maintain the same in good working order and also to keep and maintain thereon in good working order and condition a suitable number of improved coal burning locomotive engines, passengers cars, freight cars, snow ploughs, hand cars, mail and baggage cars and all implements and machinery required in the working of the line, and to run all trains necessary to accommodate the public over the whole of said line of railway so soon as the construction of the same is complete as therein provided, and with regard to the said line of railway the said Company, their lessees, assigns and representatives shall in all respects be subject to and perform the duties, obligations and liabilities cast upon them by the several Acts of Assembly, relating to the said Company. The Company is also bound to run on each and every day (Sunday excepted) under said contract at least one sufficient passenger train each way.

The present Company controlling the Caraquet & Gulf Shore Railway purchased \$450,000 of the bonds of the Company for \$65,000 for speculative purposes, and they have persistently refused to give to the twenty-five or thirty thousand persons served by the road a reasonable, safe and satisfactory service, and have been and are charging excessive freight rates. While the petitioners assert that no dividends have at any time been paid on the outstanding stock of the corporation, and no interest has ever been paid to the petitioners upon the bonds outstanding against the said railway, and the net earnings have from time to time been expended in betterments and improvements to the road, the correctness of the statement is not accepted by that portion of the public who are served by the railway. It is, on the contrary, asserted that little or nothing has been expended by the present corporation in the keeping of the railway and plant in an efficient state for operating purposes. The Company, notwithstanding its assertion that no dividends have been paid on the stock, and no interest has been paid on the bonded indebtedness, and that the net earnings have gone for betterments to the road, refused the offer of the Dominion Government to purchase the railway for the sum of \$200,000, a sum which the Minister of Railways considered a fair offer, based on prices paid for other branch lines in this Province taken over by the Dominion Government. It is believed that if the Company had accepted this offer they would be recouped for any money they may have invested in the enterprise, and the public would have been provided with an efficient service by the Department of Railways. The Act complained of only provides, and was only intended to provide, for the enforcement of the undertaking made by these companies or their predecessors in office, on accepting the subsidies, to afford a safe and proper service.

The Caraquet & Gulf Shore Railway is a local work and undertaking and has never been declared by the Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces.

It is submitted that in determining the validity of a Provincial Act one of the first questions to be determined is whether the subject matter of the Act impeached falls within any of the clauses of the subjects enumerated in section 92 of the British North America Act and assigned exclusively to the Legislature of the Province and if it be determined that the subject matter is within the jurisdiction of the Provincial Legislature the Federal veto powers should not be exercised.

In the case of the Liquidators of the Maritime Bank of Canada vs. the Receiver General of New Brunswick (1892) A.C., at pp. 441-3 their lordships say, "The object of the British North America Act was neither to weld the provinces into one, nor to subordinate provincial Government to a central authority, but to create a Federal Government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. In so far as regards those matters, which, by Section 92, are specially reserved for provincial legislation, the legislation of each province continues to be free from the control of the Dominion and as supreme as it was before the passing of the Act. It possesses powers not of administration merely, but of legislation in the strictest sense of that word; and within the limits assigned by Section 92 of the Act of 1867 these powers are exclusive and supreme. It is submitted that the principle on which the Federal veto power is now exercised has changed since the early days of Confederation, and that the view as set forth cannot be more concisely expressed than was done by Sir Allen Aylesworth, Minister of Justice, in the course of a debate in the House of Commons on March 1, 1909, upon a motion for a return of all correspondence, etc., relating to the unsuccessful application for the disallowance of the Ontario Act, 7 Edward VII, Chapter 15, respecting Cobalt Lake and Kerr Lake, whereby claims to certain mining properties then pending in the Courts were overridden. Debates in the Canadian House of Commons, March 1, 1909, Vol. 89, pp.

1750-1758. He there says: "The large question of principle which was presented for consideration was simply whether or not the provincial legislature has the power, without control, to take one man's property and give it to another, and to take away from the person injured any right of redress in the Courts. . . . I think I may safely say, that if this identical question had arisen before 1896 this legislation would have been disallowed . . . and I will say at once that I believe that was the intention with which the framers of the British North America Act provided the right of disallowance in the statute." He then quotes various official utterances of judges and Ministers of Justice to show that even as late as 1893, the authoritative view was, that if provincial legislation interfered with rights of property without providing compensation, that circumstance afforded sufficient reason for the exercise of the power of disallowance, but that his immediate predecessors in office—citing the words of the Honourable David Mills in 1901 and the Hon. Charles Fitzpatrick in 1902—had expressed a different view, in which he fully concurred, viz., that each provincial legislature, within the sphere of its authority and jurisdiction should be supreme and amenable only to its constitutional judges, the electors of its own province.

It is submitted that this principle has been frequently recognized and acted on by the Dominion Government, upon petitions for disallowance of provincial Acts upon the grounds of manifest injustice and interference with vested rights. (See ante p. 298 *et seq.*) Also see in reference to the Ontario Act where the Minister of Justice says in a report of December 31, 1901: "It is no doubt *intra vires* of the legislature, and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the legislature, and the acts of the legislature may be ultimately judged by the people. The undersigned does not consider, therefore, that your Excellency ought to exercise the power of disallowance in such cases." And again the same year in connection with a British Columbia Act, where the Minister takes precisely the same ground in a report of December 31, 1901. In 1909 this question came before the Dominion Government in reference to the suggested disallowance of the Ontario Power Commission Amendment Act, 1909, on the ground of unjust interference with vested rights. A statute was passed in aid of the policy of the Ontario Government which had established an Hydro-Electric Commission in that province with statutory powers to supply electrical energy to the municipalities of the province. This Act made alteration in contracts theretofore executed between certain municipal corporations and the Commission and declared that the contracts so altered, "shall be conclusively deemed to be contracts executed by the corporations," and enacted that every action theretofore brought, and then pending, calling in question the validity of the said contracts, or any by-laws purporting to authorize the execution of the same by the municipalities or the jurisdiction, power, or authority of the Commission to exercise any power to do any of the acts which the Acts passed in reference to the Commission authorized to be done, shall be and the same is hereby forever stayed.

The disallowance of this Act was asked for on the grounds that it, and the entire legislative scheme of which it formed a part, amounted to a breach of faith on the part of the Ontario Government, and was an unjust interference with vested rights, and calculated to greatly injure the credit, not only of Ontario but of Canada as a whole, as a field for investment, in the money markets of Europe. The Attorney General of Ontario in a communication of December 7th, 1909, says: "For upwards of two hundred years the Lords and Commons of Great Britain have legislated without fear of the royal veto, although its existence had been undoubted; and therefore in full accord with the spirit and genius of British institutions, the people of the province being entitled to all rights of British subjects elsewhere, and as free to legislate within their jurisdiction as the Lords and Commons of Great Britain are free to legislate, cannot submit to any check upon the right of the legislature to

legislate with respect to subjects within its well defined jurisdiction, although a technical right to disallow may exist. Any other view would mean that there are different grades of British subjects in the Empire; that the people of the several provinces of the Dominion have not, and are not entitled to the full and free enjoyment of these civil rights and liberties which are enjoyed by British subjects in the mother country, a condition of things which would be intolerable;" And Sir Allen Aylesworth, then Minister of Justice, in his final report against disallowance says: "In the opinion of the undersigned, a suggestion of the abuse of power, even so as to amount to a practical confiscation of property, or that the exercise of a power has been unwise or indiscreet, should appeal to Your Excellency's Government with no more effect than it does to the ordinary tribunals and the remedy in such case is, in the words of Lord Herschell, an appeal to those by whom the legislature is elected." In a very recent case of the Royal Bank vs. The King (1913) A.C. 288 popularly known as the Alberta and Great Waterways Railway Company case it is said: Their Lordships are not concerned with the merits of the political controversy which gave rise to the statute the validity of which is impeached, what they have to decide is the question whether it was within the power of the legislature of the province to pass it." While it is true that the Honourable C. J. Doherty, Minister of Justice, has expressed the general principles as set forth in paragraph 20 of the petition yet he qualifies it by saying: "not inconsistently with the public interest." He further says: "Doubtless however the burden of establishing a case for the execution of the power lies upon those who allege it."

It is alleged by your petitioners "that the real logical effect of the said Act will be to take away all their security as bondholders of said Railway Corporation and with such refined pretensions as to shock the conscience of all honourable men." This is indeed strong language, but as it lacks truth it is submitted the constitutional rights of the province cannot be cast aside by such outpourings of the spirit. It is further submitted that the Act as originally drawn was changed and a representative of your petitioners requested that the exercise of the powers conferred should be vested in the Lieutenant-Governor-in-Council, which was done. The fairness or unfairness of the general outcry of the public as to the unsatisfactory operation of the road and the frequent "run offs" occasioned by the condition of the road bed is an appeal that might be fairly left to the Legislature, the electors of the Province and the Lieutenant-Governor-in-Council as to the remedy, if any, to be applied. Moreover it is submitted that His Excellency the Governor-in-Council ought not to assume that the powers vested in the Lieutenant-Governor-in-Council by Section 7 of the impeached Act will be exercised in a drastic and unjust or confiscatory manner or that they will be exercised at all unless it is right and equitable and in the public interests so to do and to veto Section 7, which would mean the disallowance of the Act, upon such an assumption would be an unjust interference with the constitutional rights of the province and especially so if the Legislature legislated as it is submitted it has, upon subjects within its well defined jurisdiction.

The status of a provincial railway although in some respects a private corporation is not wholly so and it was not created solely for the pecuniary advancement and profits of the shareholders but being possessed of extraordinary and unusual powers it must assume special obligations where the public interests are concerned. Nothing has been done or can be done under the act which will impose any liability or imperil any vested interest and no sale of the Company's property can be had without the authority of the Lieutenant-Governor-in-Council and it may be fairly assumed that the Lieutenant-Governor-in-Council will not sanction any step that would work injury or injustice to any party interested. In conclusion it is submitted that the province of New Brunswick, in passing the act impeached legislated with respect to subjects within its well defined jurisdiction and ought not to be called upon to submit to the check sought to be imposed upon it by your petitioners and that

His Excellency the Governor-General-in-Council should be advised not to comply with the prayer of your petitioners.

And the Province of New Brunswick as in duty bound will ever pray.

Dated at Bathurst this 29th day of September, A.D. 1919.

JAMES P. BYRNE,
*Attorney General on behalf of the Province
of New Brunswick.*

10 GEORGE V, 1920

(Approved 17 September 1921.)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 8th September 1921.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of New Brunswick, passed in the tenth year of His Majesty's reign, 1920, and received by the Secretary of State for Canada on the 19th day of October, 1920, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

H. GUTHRIE,
Acting Minister of Justice.

MANITOBA

59th VICTORIA, 1896

1ST SESSION—9TH LEGISLATURE

(Approved 19 November, 1896.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the several Acts passed by the Legislature of the Province of Manitoba, in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on 30th March, 1896, and he is of opinion that they may be left to their operation without any observations.

The undersigned recommends that if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

60th VICTORIA, 1897

2ND SESSION—9TH LEGISLATURE

(Approved 8 November, 1897.)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd November, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Manitoba, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 5th of April, 1897, and he is of opinion that they may be left to their operation without any observations with the exception of:

Chapter 2. "An Act respecting Corporations incorporated out of Manitoba in respect of which the undersigned will make a separate report."

Respectfully submitted,

O. MOWAT,
Minister of Justice.

The Solicitor of the Canadian Pacific Railway to the Secretary of State re Chapter 2 of 1897

MONTREAL, 10th December, 1897.

SIR,—I have the honour to inform you that the Canadian Pacific Railway Company has instructed me to submit for the consideration of His Excellency the Governor General the following reasons for the disallowance of an Act lately passed by the

Legislature of Manitoba, assented to on the 30th March last, and entitled "An Act respecting corporations incorporated out of Manitoba."

The said Act is substantially the same as an Act of the same Legislature and bearing the same title which was disallowed by Order in Council published in the *Canada Gazette* of 11th April, 1896.

The Parliament of Canada granted to the Canadian Pacific Railway Company as a subsidy in aid of the construction of its railway a large quantity of land situate in Manitoba.

At the making of the agreement for this construction (which agreement was confirmed by the Act 44 Victoria, Chapter 1), it was understood by the Company, and the language of the said Statute shows that it was also assumed and intended by the Parliament of Canada, that the Company could own and dispose of those lands without any such restraint as is now sought to be imposed by the legislation of the Province of Manitoba, and it is hardly necessary to point out that if this restraint could be validly exercised it might be exercised in such a way and to such an extent as would be highly injurious to the Company.

Clause 9 of the Act in question is as follows:

"No company, institution or corporation, not incorporated under the provisions of the Statutes of this Province, and not having obtained a license under this Act, except those mentioned in subsection 2 of section 2 of this Act, shall be capable of taking, holding or acquiring any real estate within this Province, or of exercising the powers mentioned in Section 11 of this Act, 49 Victoria, Chap. 11, Sec. 4."

This exception does not apply to the Canadian Pacific Railway Company.

It is submitted that this clause is *ultra vires* inasmuch as it purports, amongst other things, to prevent a Railway Company taking any of the land owned by Canada in Manitoba, although the Parliament of Canada has granted that land in aid of the construction of a railway, over which construction the Parliament of Canada has exclusive jurisdiction; and this in face of the enactment by the Canadian Parliament in subsection (s) of section 90 of the Railway Act as amended under 55-56 Victoria, Chapter 27, Section 3, which subsection (s) is as follows:—

"(s.) Any Company which has obtained from the Crown by way of subsidy or otherwise in respect of the construction or operation of its railway, a right to any land or to an interest in land has, and from the time of obtaining such right has had, as incident to the exercise of its corporate powers, authority to acquire, sell or otherwise dispose of the same or any part or parts thereof; and such Company may convey the same, or any part or parts thereof, to any other Company which has entered into any undertaking for the construction or operation, in whole or in part, of the railway in respect of which such land or interest in land was given; and thereafter such other Company shall have, in respect of such land or interest in land, the same authority as that of the Company which has so conveyed it; and as to any lands given to the Company by any corporation or other party, as aid towards, or as consideration in whole or in part for the construction or operation of the Company's railway, either generally or with respect to the adoption of any particular route or on any other account, the authority of the Company and of any other Company to which it may convey its rights in any of the said lands shall be the same as if such lands had been obtained by the Company from the Crown as aforesaid."

It is submitted that the Parliament of Canada having the undoubted jurisdiction and the sole jurisdiction over the construction of such a railway as I have described, must also have the power of declaring that as one of the aids to such construction the Company shall have the right to receive and hold or dispose of such lands belonging to the Crown in the interest of Canada as the Parliament of Canada thinks fit to give.

The objection to the legislation now under discussion is, however, not confined to its being *ultra vires*—indeed, the most serious objection would hold good if the legislation were admitted to be *intra vires*.

If, for instance, it be assumed that the Legislature of a Province has power to enact that although the Parliament of Canada has authorized a designated Company to construct a particular railway—of which no other Parliament could authorize the construction—and although Parliament has granted in aid of that construction certain lands belonging to Canada (situate within the Province), and has declared that the Company may acquire and sell or dispose of those lands, nevertheless that Company shall not be able to do so unless or until the Provincial Government has formally given its consent, and then only on such terms and conditions as it may choose to impose; still there remains the important question whether such an enactment is or is not contrary to the policy of Canada as a whole.

It is submitted that the mere description of the enactment shows conclusively that it must be contrary to the policy of Canada.

In *Bank of Toronto vs. Lambe*, Lord Hobhouse adopts an interpretation of the British North America Act which I believe has always been given to it by the Government of Canada. He says it:

“Provides for the federated provinces a carefully balanced constitution under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor General.”

In a letter to the Honourable the Secretary of State, dated 16th December, 1890, I had the honour of urging the propriety of disallowing an Act of the Legislature of Manitoba (53 Victoria, Chapter 23) entitled “An Act to authorize Companies, Institutions or Corporations, incorporated out of this Province to transact business therein,” and I then stated at some length what were considered to be good reasons for the disallowance of that Act.

I do not desire to trouble you now with all that was submitted on that occasion, but it may not be out of place for me to say that the arguments then advanced seem to me to apply with still greater force to the Act now under consideration, inasmuch as it repeats in a more positive way the objectionable features of the former Act.

I have the honour to be, Sir,

Your obedient servant,

GEO. M. CLARK.

Memorandum of Minister of Justice, upon Chapter 2, Manitoba Statutes, 1897.

DEPARTMENT OF JUSTICE, OTTAWA, 15th November, 1897.

The undersigned has had under consideration Chapter 2 of the Statutes of the Province of Manitoba, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 5th of April, 1897, entitled “An Act respecting Corporations incorporated out of Manitoba.”

This Chapter appears to be an exact re-enactment of a Statute of Manitoba, 58-59 Victoria, Chapter 4, entitled “An Act respecting Corporations incorporated out of Manitoba,” which was disallowed, the only difference being that the present Statute does not contain any provision corresponding with Section 13 of the former Act, but contains all the provisions which occasioned the disallowance of the previous Act.

In the report of the then Minister of Justice, approved 25th March, 1896, the Manitoba Statute 58-59 Victoria, Chapter 4, was stated to be *ultra vires*, and one of the grounds was that it was beyond the authority of a Provincial Legislature to prohibit the exercise of powers conferred by the Parliament of Canada upon a

corporation within the scope of subjects enumerated in Section 91 of "The British North America Act" by the Parliament of Canada.

The Act provides that no company, institution or corporation not incorporated under the provisions of the Statutes of Manitoba, and not having obtained a license under the Act, except certain corporations incorporated for religious purposes, shall be capable of taking, holding or acquiring any real estate within the Province or of exercising the powers mentioned in Section 11 of the Act. The powers mentioned in Section 11 are among others the same powers and privileges with regard to lending money and transacting business within the Province as a private individual might have and enjoy so far as they may be within the corporate powers of the Company, and within the competence of the Legislature of Manitoba to grant.

The Lieutenant Governor is by the Statute empowered to grant a license to any company incorporated under the laws of Great Britain and Ireland or of the Dominion of Canada authorizing it to carry on its business within the Province on compliance with the provisions of the Act, and he is authorized to restrict the license in any manner that may seem desirable.

These provisions would apply to companies incorporated by Parliament under its general authority, and also to every bank, railway company and other corporation incorporated under its special and exclusive authority.

It has been held that the Dominion has power to incorporate a company for the whole Dominion though the objects of the Company are provincial, a Provincial Legislature having no power to authorize a company to do business, outside of the Province, as regards each Province. Sir John Thompson mentioned the cases in his report of the 16th July, 1887, on a Quebec Act.

It may be competent for a Provincial Legislature to require that a license shall be obtained by such a company before it shall do business in the Province. As to this, it is not necessary at present to express any decided opinion either way; but there can be no doubt that where a company is incorporated by the Dominion in the execution of any one or more of its special and exclusive powers of legislation enumerated in Section 91, a Provincial Legislature has no authority to impose any such condition, and the Act should be amended so as to apply, so far as Dominion corporations are concerned, to such companies only as have been incorporated for provincial objects within the authority of a Provincial Legislature so far as relates to the Province.

Provincial legislation has to be considered with reference not merely to its constitutionality but as affecting the interests of the Dominion generally, and there are some other important matters of policy to be considered as affecting the interests of the Dominion which I should not like to advise upon definitely without having the benefit of some prior consideration thereof in Council. These matters are discussed in a very able report of Sir John Thompson, dated 21st March, 1891, on another Manitoba Act of which he recommended the disallowance, and which was disallowed accordingly. (*See "Correspondence respecting Dominion and Provincial Legislation, 1867-1895," p. 941 et seq.*)

If the views of the preceding Government on these matters are substantially approved of, the Manitoba Act should be further amended by excepting from its operation the lands which the Dominion owns in Manitoba or has mortgages or security upon; and also lands which the Dominion has conveyed to railway companies and other companies, and by exempting these companies and the Hudson's Bay Company from the operation of the Act. The report referred to is printed at p. 941 of the "Correspondence respecting Dominion and Provincial Legislation, 1867-1895."

O. MOWAT,
Minister of Justice.

*Memorandum of Deputy Minister of Justice, upon the Manitoba Statute,
Chap. 2, of 1897.*

DEPARTMENT OF JUSTICE, OTTAWA, 19th November, 1897.

Since preparing the report upon which Sir Oliver Mowat's memo, of 15th instant is founded, the following additional reasons have occurred to me which I had not an opportunity of submitting to Sir Oliver:—

In the case of the Citizen's and Queen Insurance Company *vs.* Parsons, I Cartwright at p. 278 the Judicial Committee held that "Regulation of Trade and Commerce," would include regulatoin of trade in matters of interprovincial concern, and it may be, would include general regulation of trade affecting the whole Dominion.

It has also been held by the same authority that the Parliament of Canada alone can constitute a corporation with power to carry on business throughout the Dominion (*Loranger vs. Colonial Building and Investment Association*, 3 Cartwright at p. 128). This statement refers to companies incorporated not under the powers conferred within the scope of any of the subjects specially enumerated in Section 91, as to which the exclusive authority of Parliament was never doubted, but to companies the incorporation of which, but for the fact that their powers or capacity to do business are to extend beyond the limits of any one Province, would be solely within Provincial authority.

It may be questionable whether Parliament in the constitution of such a company can do more than create the company and enable it to exercise powers. There can be no doubt that to that extent Parliament has exclusive authority. If it has the larger right which may be contended for not only to confer capacity but also, notwithstanding conflicting Provincial enactments, to sanction the exercise of the powers conferred, then I apprehend that Provincial legislation limiting the exercise of such powers must be *ultra vires*. Doubtless such companies are incorporated by Parliament in pursuance of exclusive authority, and if such authority extends to the exercise of the powers conferred as well as to the capacity to exercise them, it must be that a Province cannot prohibit or fetter the execution of those powers.

If, therefore, the Dominion Parliament has the same authority with regard to the class of companies now under consideration as it has with respect to companies, incorporated under the enumerated subjects, such as banks and railway companies, this Statute would be quite *ultra vires* so far as Dominion corporations are concerned. But the reasons in favour of a more limited construction of Dominion authority are grave enough to justify the Dominion Government in leaving the Act to its operation and the question here suggested to the determination of the Courts, were it not that the Act extends to companies incorporated under the special and exclusive powers of the Dominion, and for the other considerations which I am about to mention.

Assuming that the incorporation of companies with other than provincial objects is one of the general powers of the Dominion and that it must be exercised subject to Provincial legislation within the scope of the Provincial enumerated subjects, yet the Provincial legislation to which it is sought to make the company subject may affect matters strictly relating to some one or more of the enumerations of Section 91, and if so, cannot have effect. Some force must be attached to the regulation of trade and commerce as a subject of exclusive Dominion jurisdiction. There is a singular absence in the decisions of the Judicial Committee of any affirmation as to what authority these words carry. Several matters have, however, been excluded which the Dominion considered were as a matter of intention and should be as matter of general expediency included. In the case of the Liquor Prohibition Appeal, 1895, Lord Watson, delivering the opinion of the Committee and referring to Citizens Insurance Company *vs.* Parsons, says: "It was decided that in the absence of legislation upon the subject by

the Canadian Parliament the Legislature of Ontario had authority to impose conditions as being matters of civil right upon the business of fire insurance which was admitted to be a trade so long as those conditions only affected Provincial trade." Construing this decision with that in the Citizen's case, I apprehend that legislation affecting interprovincial trade or affecting trade in matters of interprovincial concern, would be *ultra vires* of a Provincial Legislature as being comprehended within the regulation of trade and commerce. The question, therefore, arises whether legislation can be upheld by which a Province professes to take power to prohibit the right of trading within the Province of a company incorporated by the exclusive authority of Parliament to trade throughout the Dominion or in two or more of the Provinces. Such a company has capacity within the scope of its charter to trade in the Provinces and elsewhere in the Dominion just as any individual has. An enactment by a Province forbidding residents of or persons doing business in any other Province to trade in the first named Province would seem to affect more than Provincial trade. It would be a matter of interprovincial concern, and, therefore, *ultra vires* as relating to the regulation of trade and commerce, otherwise all interprovincial trade which the Privy Council seem to think the Dominion has the right to regulate could be rendered impossible by the Provinces.

If the right of trading between individuals of different Provinces be a matter of interprovincial concern, so also must be the right of trading by a company incorporated by Parliament for the purpose of trading in different Provinces. It is incorporated for the purpose of a trade which is not local or Provincial—a trade which concerns at least two Provinces; in other words, a trade which the Dominion has exclusive authority to regulate; and hence, though such a company is subject to all the general laws relating to property and civil rights and private and local matter of the respective Provinces where it does business, it cannot be bound by Provincial legislation directed against it as an extra Provincial Company in respect of its trade which concerns the whole Dominion or several Provinces.

It is, I think, safe to say that interprovincial trade or trade which concerns the whole Dominion cannot be prohibited or restricted by a Province. There may, however, be something left as to which in respect of a Dominion Company this Statute might constitutionally operate. I suppose that a Dominion Company might carry on business within a Province in such a way and for such purposes that the prohibition of such trade would be authorized as property and civil rights or private or local matters within the Province. If the Province of Manitoba wish to legislate so as to prohibit or restrict business of that kind by Dominion Companies it will, of course, be the duty of the Minister of Justice to consider the Statute by which effect is sought to be given to such a proposal, meantime it would seem, however, that the present Act should be disallowed unless indeed the Provincial Government undertake to make satisfactory amendments within the time limited for disallowance.

E. L. NEWCOMBE.

(Approved 14 March, 1898)

DEPARTMENT OF JUSTICE, OTTAWA, 8th March, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter Two (2) of the Statutes of Manitoba, passed in the 60th year of Her Majesty's reign, and received by the Secretary of State for Canada on the 5th of April, 1897, intituled "An Act respecting Corporations incorporated out of Manitoba."

This Chapter appears to be a re-enactment of the Statutes of Manitoba, 58-59 Victoria, Chapter 4, intituled "An Act respecting corporations incorporated out of

Manitoba," which was disallowed, the only difference being that the present Statute does not contain any provision corresponding with Section 13 of the former Act, but contains all the provisions which occasioned the disallowance of the previous Act.

In the Report of the Minister of Justice at that time, which report was approved on the 25th of March, 1896, the Manitoba Statute, 58-59 Vict., Chapter 4, was stated to be *ultra vires*, and one of the grounds put forward was that it was beyond the authority of a Provincial Legislature to prohibit the exercise of powers conferred by the Parliament of Canada upon a corporation within the scope of subjects enumerated in Section 91 of the British North America Act.

The Act provides that no Company, Institution or Corporation not incorporated under the provisions of the Statutes of Manitoba, and not having obtained a license under the Act, except certain corporations incorporated for religious purposes, shall be capable of taking, holding or acquiring any real estate within the Province, or of exercising the powers mentioned in Section 11 of the Act. The powers mentioned in Section 11 are, among others, the same powers and privileges with regard to lending money and transacting business within the Province as a private individual might have and enjoy so far as they may be within the corporate powers of the company and within the competence of the Legislature of Manitoba to grant.

The Lieutenant Governor is by the Statute empowered to grant a license to any Company incorporated under the laws of Great Britain and Ireland, or of the Dominion of Canada, authorizing it to carry on its business within the Province on compliance with the provisions of the Act, and he is authorized to restrict the license in any manner that may seem desirable. These provisions would apply to companies incorporated by Parliament under its general authority, and also to every bank, railway company and other corporation incorporated under its special and exclusive authority.

It has been held that the Parliament of Canada has power to incorporate a company for the whole Dominion, though the objects of the company are provincial, while a Provincial Legislature has no such power. The cases where this rule applies are mentioned in a Report of Sir John Thompson of the 16th of July, 1887, in the consideration of a Quebec Act.

When the objects of a corporation are provincial, but it desires corporate existence extending over the Dominion of Canada, it may be doubted whether the Parliament of Canada can do more than create a company with the capacity to exercise such powers; and the undersigned is of opinion that any powers which may be conferred by Parliament in such cases can be exercised only so far as the exercise of them is consistent with the general laws of the Provinces; otherwise the Provincial Legislature would have no greater authority to prohibit the exercise of those powers than it has to prohibit those falling within the enumerated subjects of Section 91 of the British North America Act.

There can be no doubt that as to companies incorporated under the enumerated powers of the Parliament of Canada, such as banks and railway companies, this Statute of the Legislature of Manitoba is *ultra vires*, but on account of the reasons in favour of the more limited construction, when the Parliament of the Dominion undertakes to incorporate a company for two or more Provinces for objects that would otherwise be provincial, the Crown might well leave such a Statute to its operation and the parties interested to the remedies which the Courts afford.

Assuming then for the purpose of considering this Statute that the incorporation of companies by the Parliament of Canada with provincial objects is within the legislative authority of the Dominion and that it must be exercised subject to provincial legislation within the scope of provincial authority, yet such legislation may be of a character to hamper the Parliament of Canada in respect to matters lying within its exclusive jurisdiction, and if allowed to go into operation might defeat the settled policy of the Federal Government and Parliament.

It may be competent for a Provincial Legislature when the franchises sought by a Dominion corporation are of a provincial character to require that a license shall be obtained by such company before it is permitted to do business in the Province. Upon that question it is not at present necessary to express an opinion, but there can be no doubt, where a company is incorporated by the Dominion in the execution of one or more of its special and exclusive powers of legislation, enumerated in Section 91, that the Provincial Legislature has no authority to impose any such condition, and this Statute should be so amended as to release companies incorporated by the Parliament of Canada or under its authority from such restraints.

Provincial legislation is to be considered also with reference to the question of public policy as well as the question of *ultra vires*, and the provisions of this Act as they now stand might very seriously interfere with the proprietary interests of the Dominion within the Province of Manitoba.

In the opinion of the Minister this Act before it can be permitted to remain upon the Statue-book must not, in its operation, extend to lands which the Crown in the right of the Parliament of Canada owns in the Province of Manitoba, or upon which it has mortgages or security, nor must it extend to lands which the Dominion has to convey to railway companies and other companies, in so far as such a Statute may be incompatible with any contracts into which the Government of Canada has entered with these companies.

It may be open to controversy whether in respect to such lands the Government of Canada ought to have entered into contracts which may have encroached upon the authority of the Government and Legislature of a Province in the pursuit of any line of public policy arising from the exercise of their local jurisdiction and which they may believe to be for the advantage of the Province, but the Government of Canada having entered into such contracts, largely in the interests of the Province, and the Parliament of Canada having sanctioned them, it may well be that it has become the duty of the Government under the circumstances to see that the public faith is kept.

There is the further question which has been suggested as to whether legislation can be upheld by which a Province proposes to take power to prohibit the right of trading within the Province of a company incorporated by the exclusive authority of Parliament to trade throughout the Dominion, or in two or more of the Provinces. This question, the undersigned considers, may be more properly left to the judgment of the Courts than be invoked as a reason for disallowance.

The Minister submits that the present Act should be disallowed unless the Government of Manitoba undertakes to make satisfactory amendments within the time allowed for such disallowance, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba for his information, and in order to ascertain whether such amendments will be made within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

(Approved 2 April, 1898)

DEPARTMENT OF JUSTICE, OTTAWA, 1st April, 1898.

To His Excellency the Governor General in Council:

Referring to the Order of Your Excellency in Council of 14th March, 1898, with respect to Chapter 2 of the Statutes of Manitoba, 1897, intituled "An Act respecting Corporations incorporated out of Manitoba," the undersigned has the

honour to report that the Order in Council having been communicated to the Government of the Province of Manitoba, he has received a communication from the Attorney General of the Province, copy of which is herewith submitted. In view of what is stated by the Attorney General and of the fact that the time for disallowance will expire within a few days, the undersigned, for the reasons mentioned in the Order in Council of 14th ultimo, recommends that the said Statute be disallowed.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Attorney General of Manitoba to the Minister of Justice.

WINNIPEG, 28th March, 1898.

MY DEAR MR. MILLS,—With reference to your Foreign Corporations Act, the time for consideration being so very short now it seems to me that the best course to be pursued, if you are still bent upon disallowing the Act, is to disallow it, and at once. Within such a limited time it would be quite impossible for us to negotiate as to the amendments which you might think satisfactory. Immediately upon its disallowance we will amend the Revised Statute by extracting from it the stringent forfeiture clause, which is one of the principal objections. I think, therefore, that the best course would be for you to proclaim at once the disallowance of the Act and advise me to that effect so that I can at once proceed to amend the old Act.

Yours truly,

J. D. CAMERON.

Chapter 2 was disallowed accordingly 2 April, 1898

(Approved 3 May, 1898.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copy of a despatch from His Honour the Lieutenant Governor of Manitoba, addressed to the Honourable the Secretary of State for Canada, inclosing copy of an Order of the Executive Council of the Province, passed on 29th March last, with reference to the disallowance of Chapter 2 of 60th Victoria of the Statutes of Manitoba, intituled "An Act respecting Corporations incorporated out of Manitoba." The Act having been disallowed, the undersigned does not consider it necessary at present to make any observations upon the statements contained in the report approved by the said Order in Council, and he recommends that no further action be taken in the matter.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Report of the Attorney General of Manitoba approved by the Lieutenant Governor in Council, 29 March, 1898, transmitted to the Secretary of State by the Lieutenant Governor 2 April, 1898.

The undersigned has had under consideration copy of a Report from the Honourable the Minister of Justice to His Excellency the Governor General in Council, dated

8th March, 1898, upon the subject of disallowance of Chapter 2 of the Statutes of Manitoba, passed in the sixtieth year of Her Majesty's reign, entitled "An Act respecting Corporations incorporated out of Manitoba."

With respect to the matters dealt with in the said report, the undersigned begs to submit the following:—

The Statute in question was passed at the last session of Provincial Legislature for the purpose of consolidating the law relating to Foreign Corporations, and of eliminating from it certain features that were considered objectionable. It will be observed that the stringent forfeiture clause, Section 14, Chapter 24, R.S.M., was wholly struck out in the consolidation. Sir John Thompson, in his report, dated 21st March, 1891, strongly criticised this section which was also found in the Act then under consideration, and made it one of the principal grounds upon which he recommended its disallowance. The Bill was considered carefully in Committee where the Companies interested were fully represented by agents and counsel, who were satisfied with the law as amended. The result of disallowance of the Act was simply to restore the Revised Statute with its features as to forfeiture which have been considered so objectionable. The disallowance of the Act cannot effect any improvement in the law, but absolutely the reverse.

The Minister states:—"There can be no doubt that as to companies incorporated under the enumerated powers of the Parliament of Canada such as banks and railway companies, this Statute of the Legislature of Manitoba is *ultra vires*, but on account of the reasons in favour of the more limited construction, when the Parliament of the Dominion undertakes to incorporate a company for two or more Provinces for objects that would otherwise be provincial, the Crown might well leave such a Statute to its operation, and the parties interested to the remedies which the Courts afford." And further: "There can be no doubt where a company is incorporated by the Dominion in the execution of one or more of its special and exclusive powers of legislation enumerated in Section 91, that the Provincial Legislature has no authority to impose any such condition, and that the Statute should be so amended as to release companies incorporated by the Parliament of Canada, or under its authority, from such restraint."

With this statement, the undersigned takes direct issue upon the grounds, amongst others, set forth in the Report of the Attorney General of Manitoba, dated 7th February, 1896, in reply to a Report of the Minister of Justice, dated 24th October, 1895, when a similar Statute was under consideration.

The undersigned submits that the Act in question is clearly within the powers of the Legislature to enact, and that any Corporation, Dominion, Imperial or Foreign, that carries on business in this Province is subject to the laws of the Province, in respect to licensing, taxation, and otherwise, to the same extent as a natural person. Creating a corporation cannot be said to be making a law, nor can greater and higher privileges in this respect be given by the Dominion Parliament to a corporation than to a natural person. The Judicial Committee of the Privy Council in the case of *Citizen Insurance Company vs. Parsons*, 9 Appeal Cases, pages 165, 166, said:—"What the Act of Incorporation has done is to create a legal and artificial person, with capacity to carry on certain kinds of business, which are defined, within a defined area, namely, throughout the Dominion. Among other things, it has given to the association power to deal in land and buildings, but the capacity so given only enables it to acquire and hold land in any Province consistently with the laws of that Province relating to the acquisition and tenure of land. If the company can so acquire and hold it, the Act of Incorporation gives it capacity to do so."

Since this case the current of the decisions has been changed. On the contrary, the dicta in the *Parsons* case have been strengthened by the very clear judgments of the Privy Council in the *Colonial Building and Investment Association vs. The Attorney General of Quebec*, 9 Appeal Cases, page 157; *The Bank of Toronto vs. Lambe*, 12 Appeal Cases, page 575; and *The Brewers and*

Malsters' Association vs. The Attorney General of Ontario, Appeal Cases, 1897, page 231. Mr. Lefroy deals with the subject very exhaustively and lucidly in his recent work on *The Law of Legislative Power in Canada*, pages 617, *et seq.* It is held that these authorities establish beyond any reasonable doubt that the enactment now in question is perfectly valid and constitutional.

The Minister of Justice objects to the Act not only as being unconstitutional, but also as being contrary to public policy. He states in his report:—"Provincial legislation is to be considered also with reference to the question of public policy, as well as to the question of *ultra vires*, and the provisions of this Act as they now stand might very seriously interfere with the proprietary interests of the Dominion within the Province of Manitoba. In the opinion of the Minister, this Act, before it can be permitted to remain on the Statute book, must not in its operation extend to lands which the Crown in the right of the Parliament of Canada owns in the Province of Manitoba, or upon which it has mortgages or security, nor must it extend to lands which the Dominion has to convey to railway companies and other companies, in so far as such a Statute may be incompatible with any contracts into which the Government of Canada has entered with these companies."

The undersigned submits that the Act in question does not and cannot, under the constitution interfere with the proprietary interest of the Dominion in Manitoba. The undersigned also holds that the Act does not and could not under the constitution extend its operation to Dominion lands in Manitoba; nor could it extend to lands upon which the Dominion has "mortgages or security," because at the present time there are no such lands to which the Act by any possibility could apply, nor could it extend to lands that the Dominion has to convey to railway companies. It is further submitted that the Act is in no wise incompatible with any contract into which the Dominion has entered. If it is, the incompatibility has never yet been pointed out.

With reference to the statement that the Government of Canada may have encroached upon the authority of the Government and Legislature of the Province, the undersigned submits that such encroachment is impossible so long as the provisions of The British North America Act stand.

The undersigned, therefore, holds that the Act is within the unquestioned powers of the Legislature, and that it is in no way contrary to public policy. That to disallow upon the former ground is for the Dominion Government to usurp the functions of the Courts, and an unwarranted interference with the constitutional rights of the Legislature of the Province.

Respectfully submitted,

J. D. CAMERON,

Attorney General.

COUNCIL CHAMBER, 29th March, 1898.

61st VICTORIA, 1898

3RD SESSION—9TH LEGISLATURE.

(Approved 26 November, 1898.)

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1898.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of Manitoba, passed in the sixty-first year of Her Majesty's reign (1898), received by the Secretary of State for Canada

on 7th May, 1898, and he is of opinion that these Statutes may be left to their operation without comment, with the exception of:

Chapter 31, "An Act to amend the Municipal Act."

Objections have been urged to Section 40 of this Statute by the Winnipeg Water Works Company and the bondholders of that Company.

The undersigned has the honour to submit herewith copies of the petitions of the Company and the bondholders, which have been referred to the undersigned. Copies of these petitions have been submitted to the Attorney General of the Province of Manitoba for his remarks thereon, and the undersigned has the honour to submit the reply of the Attorney General, dated 29th September, 1898, also copy of a letter which the undersigned has received from Messrs. Hough and Campbell, Solicitors of the City of Winnipeg, dated 23rd September, 1898, inclosing newspaper clippings of a report adopted by the Winnipeg City Council.

It appears from the petitions and correspondence submitted that the Winnipeg Water Works Company and its bondholders claim that their rights and securities are prejudiced by the section in question which authorizes the City of Winnipeg to lay down a system of Water Works and to purchase the system of the Winnipeg Water Works Company.

The undersigned considers that these provisions confer authority upon the City which did not previously exist, and that so far as they authorize the City to commence the construction of a new system of water works before 23rd December, 1900, they are inconsistent with legislation in the nature of a monopoly which had formerly been granted to the Winnipeg Water Works Company. It is to be observed, however, that the section does not interfere with the exclusive authority granted to the Company to supply water for the period of twenty years, terminating on the date above mentioned. Arguments on both sides as to the original understanding between the City and the Company, and as to the intention of the Legislature seem to have been urged before the Assembly with reference to the legislation now in question. The matter is unquestionably one within the exclusive legislative authority of the Province, and the undersigned does not consider that a case has been made out which would justify Your Excellency in disallowing a Statute passed in the exercise of such authority. In the judgment of their Lordships of the Judicial Committee in the case of the Attorney General of Canada *vs.* the Attorneys General of Ontario, Quebec and Nova Scotia, 1898, Appeal Cases 713, their Lordships, referring to exclusive provincial authority observe: "The suggestion that the power might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject-matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is an appeal to those by whom the Legislature is elected."

It would seem, therefore, that the objections urged by the petitioners are for the consideration of the Provincial Legislature, which has power to grant a remedy for any grievance which may be established.

The undersigned, therefore, recommends that the Statute be left to its operation.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

62nd AND 63rd VICTORIA, 1899

4TH SESSION—9TH LEGISLATURE

(Approved December 12, 1899.)

DEPARTMENT OF JUSTICE, OTTAWA, 4th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of Manitoba, passed in the 62nd and 63rd year of Her Majesty's reign, 1899, and received by the Secretary of State for Canada on the 25th April, 1899.

He observes that by section 1 of chapter 4, intituled "An Act to amend 'The Children's Protection Act of Manitoba,'" it is provided that in certain cases the Attorney General may at the expense of the province, cause a child to be removed to an industrial school or refuge outside of the province to be there kept and educated for a period of time. This enactment can have effect only so far as the territorial and other jurisdiction of the legislative assembly is concerned, and cannot in itself authorize the detention of a child beyond the limits of the province. The undersigned assumes, however, that the provision is intended to be acted upon only in cases where there is corresponding legislation in the province within which the child is to be confined, authorizing such detention, and for that reason he does not consider that the Act ought to be disallowed.

The other statutes do not seem to call for any comment.

The undersigned is of opinion, therefore, that all these Acts may be left to their operation, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province of Manitoba for the information of the government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

63rd AND 64th VICTORIA, 1900

1ST SESSION—10TH LEGISLATURE.

The Deputy Minister of the Interior to the Deputy Minister of Justice.

DEPARTMENT OF THE INTERIOR, OTTAWA, 6th April, 1901.

SIR,—I have the honour to inform you that the attention of the Minister of the Interior has been recently called to certain provisions of the Real Property Act, 63-64 Victoria, chapter 47, passed by the legislature of the province of Manitoba at its session of last year, which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province. These are the sections relating to plans and their registration, sections 57-64, and especially section 64, which provides amongst other things, that all plans intended for filing or registration under the Act shall be certified as accurate by a provincial land surveyor, under oath, and shall be made in all respects satisfactory to the examiner of surveys.

I inclose a memorandum prepared by the Surveyor General in which the objections to these provisions are pointed out and discussed, and the minister desires me to state that so serious do these objections appear to him that he would ask the Minister of Justice to consider whether they are not sufficient to justify a disallowance of the Act, unless the provincial government undertake to have it amended.

The minister would be satisfied with an amendment declaring that section 64 of the Act, in so far as it provides that plans intended to be filed or registered under the provisions of such Act, shall be certified by a provincial land surveyor and shall be made satisfactory to the examiner of surveys, does not apply to plans of Dominion lands prepared by Dominion lands surveyors under the provisions of the Dominion Lands Act and amendments thereto, provided such plans supply the information which the provincial Act requires. So much he considers essential to the proper and convenient administration of Dominion lands in the province of Manitoba, and in view of the statements in the Surveyor General's memorandum, he does not see that the provincial authorities can object to such a proviso. The minister would not be disposed to insist upon more, although there are other features of the Act referred to which may be open to more or less objection from a Dominion point of view.

I have the honour to be, sir, your obedient servant,

JAS. A. SMART,
Deputy Minister of the Interior.

DEPARTMENT OF THE INTERIOR,
TOPOGRAPHICAL SURVEYS BRANCH, OTTAWA, 29th March, 1901.

Memorandum of the Surveyor General re plan of survey of the E. half section 11, township 11, range 3, for the information of the Minister of the Interior.

A survey of the east half of section No. 11, township 11, range 3, west of principal meridian, which is Dominion land, having been made under instructions of the Minister of the Interior, by Henry Lawe, D.L.S., a copy of the plan was forwarded to the Registrar General of Manitoba, who returned it stating that it could not be registered for two reasons:

1. Under section 57 of the Real Property Act of 1900, this plan must be signed by a provincial land surveyor.
2. Under the above section the plan must be in duplicate, both duplicates must be originals, and in case a river or creek is a boundary line of a lot, there must be a traverse of that river or creek. This traverse line must be shown on the plan. This is very necessary, especially in the case of a small river, such as the Sale is at that point, as the banks and centre of the bed are continually changing.

The provision requiring a plan to be signed by a provincial land surveyor when filed for registration is in section 64 of the Act, which is as follows:—

"All plans intended for filing or registration under this Act must be based on surveys performed with instruments independent of the magnetic needle, and shall be certified as accurate by a provincial land surveyor under oath in the form in schedule M hereto, and shall be made in all respects satisfactory to the examiner of surveys."

It will be observed that under this clause the Minister of the Interior cannot register any plan of survey of Dominion lands, whether the survey be the subdivision of a township into sections, or the subdivision of a section into smaller parcels, unless the survey is made by a provincial land surveyor and satisfactory in all respects to the examiner of surveys.

While it is quite proper to require surveys of private property within the province to be made by provincial officers, it does not seem that any useful purpose is served by extending this requirement to surveys of Dominion lands made by the Dominion government. Under the Dominion Lands Act, surveys of Dominion lands have to be made by Dominion land surveyors, who before being admitted to practise, must pass examinations just as stringent, and must possess professional qualifications just as high as those of provincial land surveyors. There is no reason to suppose that a survey will not be made with as much care and accuracy by a Dominion as by a pro-

vincial land surveyor, or that the former is less competent than the latter. The Crown in the right of the Dominion might therefore well be exempted, without any detriment to the interests of the province, from the obligation of employing provincial land surveyors.

It may be pointed out that the provincial land surveyors of Manitoba are formed into an association having the power to regulate admission to its ranks and to prescribe a tariff of fees to be paid to surveyors for their services. Were the Minister of the Interior obliged to have all his surveys in the province made by provincial land surveyors, it would be in the power of the association to make the conditions upon which the services of their members could be obtained as onerous as they might see fit.

The second reason given by the Registrar General for refusing Mr. Henry Lawe's plan refers to matters of detail which can well be adjusted without subjecting the Dominion government surveys to the sweeping requirement of section 64, that "they shall be made in all respects satisfactory to the examiner of surveys." There is no reason why the department should refuse to furnish to the Registrar General plans in duplicate, both duplicates being originals, or to show the traverse line upon the plan or to comply with any other request which he may find necessary for his purpose. Whether the Registrar General has or has not under the law the right to make such requests, it is the duty and in the interest of the department to help him in every possible way. His object is to secure surveys which will serve as a basis for perfect titles; that is precisely the object of the department. On the other hand, it must be remembered that the cost of the survey of a mile square may be ten dollars or a thousand dollars according to the degree of accuracy and minuteness of the operations. The interest of the examiner of surveys is to have surveys made as perfect as possible, and, in the case of Dominion government surveys, irrespective of cost which the Dominion government has to pay. He can refuse any survey of Dominion lands and the law does not oblige him to give any other reason than "that the survey has not been made in all respects satisfactory to him." Although the authority to order the survey of Dominion lands and to pay for it remains with the Minister of the Interior, his authority stops there; the examiner of surveys directs how and by whom the survey shall be made and practically what amount of money shall be spent upon it.

Respectfully submitted,

E. DEVILLE,
Surveyor General.

The Secretary of State to the Lieutenant Governor of Manitoba

OTTAWA, 5th June, 1901.

SIR,—The attention of the government of Canada has been recently called to certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province. These are the sections relating to plans and their registration, sections 57 to 64 inclusive, and especially 64, which provides, among other things, that "all plans intended for filing or registration under the Act shall be certified as accurate by a provincial land surveyor under oath, and shall be made in all respects satisfactory to the examiner of surveys."

It will be observed that under this clause the Minister of the Interior cannot register any plan or survey of Dominion lands, whether the survey be the subdivision of a township into sections, or the subdivision of a section into smaller parcels, unless the survey is made by a provincial land surveyor and satisfactory in all respects to the examiner of surveys.

While it may be expedient, in the judgment of the legislature, to require surveys of private property within the province to be made by provincial officers, it does not seem right or proper to extend that principle to surveys of Dominion lands made by the Dominion government; particularly as under the Dominion Lands Act surveys of Dominion lands must be made by Dominion land surveyors. It cannot be urged that they are less capable, since before being admitted to practice, they must pass examinations just as stringent, and must possess professional qualifications just as high as those of provincial land surveyors. There is no reason to suppose that a survey will not be made with as much care and accuracy by a Dominion as by a provincial land surveyor, or that the former is less competent than the latter.

Great inconvenience has already been caused by the enforcement of the provisions referred to, and I trust that an assurance will be given by your government that at the next session of the legislature the Act will be amended by repealing the objectionable features mentioned.

The Privy Council would regret having to advise the disallowance of the Act, but unless an unqualified assurance will be given by your government that at the next session of the legislature the objectionable features to which attention has been called will be repealed, there will be no other alternative than to advise the disallowance of the Act.

I hope it will be convenient for your government to give the subject their early attention.

I have, &c.,

R. W. SCOTT,
Secretary of State.

(Approved 8 June, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 6th June, 1901.

To His Excellency the Governor General in Council:

The attention of the undersigned, as acting Minister of Justice, has been recently called to certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province. These are the sections relating to plans and their registration, sections 57 to 64, inclusive, and especially 64, which provides among other things that "all plans intended for filing or registration under the Act shall be certified as accurate by provincial land surveyors under oath, and shall be made in all respects satisfactory to the examiner of surveys."

It will be observed that under this clause the Minister of the Interior cannot register any plan of survey of Dominion lands, whether the survey be the subdivision of a township into sections, or the subdivision of a section into smaller parcels, unless the survey is made by a provincial land surveyor and satisfactory in all respects to the examiner of surveys.

The enforcement of the provisions in the Real Property Act referred to, have already caused great inconvenience in the administration of the Department of the Interior, and in the opinion of the undersigned the government of the province of Manitoba should be informed that, unless an unqualified assurance will be given that the objectionable features, to which attention has been drawn, will be repealed at the next session of the legislature, the Act will be disallowed.

All of which is respectfully submitted.

R. W. SCOTT,
Acting Minister of Justice

(Approved 13 June, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 6th June, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of Manitoba, passed in the 63-64th year of Her Majesty's reign (1900), received by the Secretary of State for Canada on July 21st last, and he is of opinion that these may be left to their operation without comment, except Chap. 47, "An Act respecting Real Property in the province of Manitoba," which Act has been the subject of a separate report, and except as follows: Chapter 14, "An Act respecting protection of Game."

Under section 17 of this Act, exportation out of the province of any of the animals or birds mentioned in the Act is prohibited, except under special permit from the Minister of Agriculture and Immigration. The predecessors in office of the undersigned have formerly called attention to similar provisions of other provincial Acts, objecting that a provincial legislature had no authority to prohibit exportation from the province. Subject to this objection, which the undersigned reiterates, he considers that this statute may be left to its operation.

Chapter 35, "An Act to amend 'The Assessment Act'"; and

Chapter 55, "An Act respecting the taxation of corporations and others for the purpose of supplementing the revenues of the Crown in the province of Manitoba."

Section 2 of the former Act authorizes a special tax not exceeding \$50 on every person or firm doing business as a private banker in the city of Brandon.

The expression "private banker," for the purposes of Chap. 55 is defined to mean any person or any number of persons associated together, transacting and doing a general banking business in the province of Manitoba, and by section 3 every private bank is made subject to taxation as therein mentioned.

In the report of the Minister of Justice of 18th May, 1894, recommending the disallowance of an ordinance of the North-west Territories respecting municipal assessment, and collection of taxes and licenses, which report was subsequently approved by His Excellency in Council, reference was made to section 38 of that ordinance, which authorized the collection of license taxes from private or unincorporated banks, and the minister stated he considered that provision *ultra vires* "because the Bank Act does not intend that private or unincorporated banks shall be permitted to do business." There were other grounds for the disallowance of that ordinance, and the undersigned does not consider that the extreme remedy should be adopted on account of the enactments of the two statutes now in question relating to private banks. In so far as the business of private banking is made illegal by Dominion statutes, it would be inconsistent that taxes should be levied by local authorities in respect of such business. It would, therefore, in the opinion of the undersigned, be proper for the provincial legislature to modify these provisions.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba for the information of his government.

Respectfully submitted,

R. W. SCOTT,

Acting Minister of Justice.

The Lieutenant Governor to the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 12th June, 1901.

SIR,—I have the honour to acknowledge the receipt of your despatch, dated the 5th instant, informing me that the attention of the government of Canada has been recently called to certain provisions of the Real Property Act, 63-64 Vic., Chap. 47,

passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and vexatious in so far as they apply to Dominion lands in that province, and that unless unqualified assurances are given by my government that at the next session of the legislature the objectionable features to which attention has been called will be repealed, there will be no other alternative than to advise the disallowance of the Act.

I beg to state that I have transmitted to my government, for their information, a copy of the despatch, with a request to be advised at their earliest convenience of the intentions of my government upon the subject.

I have the honour to be, sir your obedient servant,

D. H. McMILLAN,
Lieutenant Governor.

The Acting Deputy Minister of Justice to the Under Secretary of State.

DEPARTMENT OF JUSTICE, OTTAWA, 2nd July, 1901.

Referring to an Order of His Excellency in Council on June 8 last, with reference to the Act of the legislature of Manitoba, 63-64 Vic., Chap. 47, "The Real Property Act," and to the despatch which no doubt was addressed by the Department of State to the Lieutenant Governor of Manitoba in relation to the matter, the undersigned has the honour to recommend that, in the event of no reply having been received, a further communication be sent to the Lieutenant Governor of Manitoba, calling attention to the fact that the time for disallowance will expire on 20th instant, and requesting that an answer be returned at the earliest possible date.

A. POWER,
Acting D.M.J.

The Secretary of State to the Lieutenant Governor

DEPARTMENT OF THE SECRETARY OF STATE, OTTAWA, 2nd July, 1901.

SIR,—On receipt of your letter of 20th June, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session last year, I referred the communication to the Minister of the Interior, together with the letter from the Provincial Secretary and the report from the district registrar, and I am to-day in receipt of a letter from the Honourable Mr. Sifton, in which he states that he "does not consider that there is any importance whatever to be attached to the contention that examination by the district registrar or the inspector of land titles offices of Dominion plans is necessary in order to make them correct, nor is there anything whatever in the idea that the plans are not likely to be absolutely correct unless passed upon by a provincial land surveyor. The Dominion land surveyors have always ranked quite as high or higher in their profession than the provincial land surveyors in Manitoba, and if there should be any technical changes which the district registrar desires to have made in any of our plans, or if there should be any markings which he requires to have put on, all he has to do is to advise the Surveyor General, and any reasonable or proper regulations which they may see fit to make will be promptly complied with."

The minister has forwarded to me the following proviso to be added to section 64 of the Act:—

"Provided that nothing in this section nor in any other section of this Act shall warrant the rejection of any plan of the survey of Dominion lands which has been made, prepared, certified and approved in accordance with the provisions of the

Dominion Lands Act (Chap. 54 of the Revised Statutes of Canada) or of any amendment thereof, but that any such plan which has been so made, prepared, certified and approved and which has been forwarded by the Minister of the Interior to the district registrar or registrar of the district in which the lands shown on such plan are situated, shall be accepted and filed or registered by such district registrar."

I presume there will be no objection to your government passing an Order in Council containing an assurance that the Act will be amended at the next session by adding to section 64 the provision referred to.

As the time for action is now very short, I hope that immediate attention will be given to the subject, and that I may receive at an early date an Order in Council in the terms suggested.

I have, &c.,

R. W. SCOTT,
Secretary of State.

The Lieutenant Governor to the Secretary of State.

GOVERNMENT HOUSE, WINNIPEG, 20th June, 1901.

SIR,—With reference to your communication of the 5th instant, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of this province at its session of last year, and which have been found to be embarrassing and vexatious, and requesting the government of Manitoba to give assurance to the Dominion government that the objectionable features of the Act will be repealed at the next session, I now have the honour to inclose, herewith, a copy of a letter received from my Provincial Secretary giving assurance that a certain amendment will be made to the said statute at the next session of the legislature.

I also inclose copy of a communication, bearing on the subject, from W. E. Macara, district registrar, addressed to the Honourable the Attorney General of Manitoba.

I have the honour to be, sir, your obedient servant,

D. H. McMILLAN,
Lieutenant Governor.

The Provincial Secretary to the Lieutenant Governor.

WINNIPEG, 20th June, 1901.

SIR,—I have the honour to acknowledge the receipt of your communication of the 12th instant, transmitting a copy of a despatch from the Honourable the Secretary of State, bearing date the 5th instant, notifying your honour that the Governor General in Council would disallow the Real Property Act, chapter 47 of 63-64 Victoria, passed by the legislature of the province of Manitoba at the session of 1900, unless an assurance would be given by your government, that at the next session of the legislature an objectionable feature, to which attention is called in the despatch, would be repealed.

In reply, I beg to inclose copy of a report on the matter received from W. E. Macara, District Registrar and Registrar General, under the Real Property Act, also copy of a letter from the department of Attorney General, and I have to request that you will transmit to the Secretary of State the assurance of your government that the said statute will be amended at the next session of the legislature by the insertion of the words "Except in case of land vested in His Majesty in the right of Canada," after the word "and" in the third line of section 64 of the Act, if the government of Canada, after perusal and consideration of Mr. Macara's report, shall intimate its desire to have such an amendment made.

I might add that if the government of the Dominion thinks that there should be an Order in Council passed by your honour, I will recommend the passage of an Order in Council to carry out the assurance given in this letter.

I have the honour to be, &c.,

D. H. McFADDEN,
Provincial Secretary.

From the District Registrar to the Attorney General.

WINNIPEG, 17th June, 1901.

SIR,—I have the honour to acknowledge your communication regarding the proposed disallowance of the Real Property Act on account of the provision therein contained, that the plans to be registered under that Act must be certified as accurate by a provincial land surveyor under oath in a certain form, and must be made satisfactory to the examiner of surveys. I beg leave to give you a brief history of the circumstances which led up to the legislation complained of.

Shortly after the Torrens System came into force here it became apparent that the greatest difficulty in the way of making that system a success was the most incorrect state of surveys, not only by the Dominion government in laying out sections and river lots, but subsequently by owners in subdividing them into town lots. To such an extent did these errors prevail that I was obliged to discontinue dealing under the Torrens System with any lots in a large number of the towns and villages in Manitoba or with any lots in at least two-thirds of the area of the city of Winnipeg. In this connection it must not be lost sight of that not only does the government, under the Real Property Act, guarantee the title to land, but it also guarantees the boundaries as described in a certificate of title. It will, therefore, be seen why I found it necessary, not only to deprive a large portion of the province of the benefits of the system, but also to have such legislation passed as would give me complete control of all surveys at a time when errors could most easily be corrected, namely, at the time of and before the registration of the plan. This would prevent further errors occurring, or at least minimize the numbers of such errors in future surveys or plans. In order to cure past defects and errors I obtained the passing of the Special Surveys Act, of which Act several municipalities have taken advantage. The city of Winnipeg had a special survey made under that Act, at a cost of over \$20,000, and I venture to think that no money was ever spent by this city to better advantage. The Dominion government themselves have attempted to take advantage of the same Act in connection with their townsite of Whitemouth, but in this as in all other cases, they sent a man up from Quebec to do the work, and the result was that the special survey was worse than the original, and when it was presented to the Attorney General for confirmation I was obliged to recommend its rejection, and it stands in that position to-day.

The fact is that a very large proportion of the surveys made in this province prior to the time when I obtained control of them under the clause complained of, were very bad. In the case of subdivisions into town lots made by the Dominion government at least so far as such have come under my notice, and I think I have dealt with all or nearly all such Dominion government townsites in the province, they are all bad without an exception (except one), and this was due largely, as I believe, to the fact that the work was done by Dominion land surveyors sent here from Quebec or Ontario.

I know of only one instance in which the Dominion government laid out a townsite in such a way that I am able to deal with it under the Real Property Act, and that is the townsite of Gimli, which was laid out by Mr. Henry Lawe, a land surveyor residing in this province. It is pointed out in the memo. of the Secretary of State

that, "There is no reason to suppose that a survey will not be made with as much care and accuracy by a Dominion as by a provincial land surveyor, or that the former is less competent than the latter." I quite agree with this if the Dominion land surveyor is also a provincial land surveyor of this province. The results as pointed out by me above show that where he is not also a provincial land surveyor he does not do the work properly whether competent or not.

I think from what I have stated, you will agree with me that where titles and boundaries of lands are guaranteed by this province, we must exercise as complete control as possible over surveys and plans, and there does not seem to me any good reason why the Dominion government should be treated otherwise in this respect than any individual would be. On the other hand there does seem to be every reason why they should desire to have their plans registered in such a state that after the title passes from the Crown, it can readily be dealt with by the owner, instead of his being blocked by some defect in the survey, which occurred when the title was in the Crown. To say that the Real Property Act conflicts with the Dominion Land Act, in that the former requires a provincial and the latter a Dominion land surveyor, is begging the question, as most of the provincial land surveyors in this province are also Dominion land surveyors.

I would also call your attention to the statement made in the communication of the Secretary of State that the provision complained of interferes with the survey of townships into sections. This statement is incorrect. Dominion government township plans are not registered, but merely filed, and no such plan was ever refused in any registry office or land titles office in this province, but on the contrary, the filing of such is almost of daily occurrence. The clauses complained of do not affect such plans in the slightest degree, but affect only plans of subdivision into city, town or village lot or other lots or blocks of a similar nature.

I also call your attention to the fact that the chief, and I think the only cause of complaint, namely, that section 64 requires the plan and survey to be made by a provincial land surveyor, is not new legislation. The same provision was in the Real Property Act of 1889, and remained there until that Act was repealed by the present one. See sections 63, 65 and 67, Chap. 133 R.S.M. It must, therefore, be observed that if the present Act is disallowed, the old Act, with these sections in it comes into force again. I trust, however, that there will be no disallowance of this Act, as it would lead to very serious confusion by reason of numerous provisions in the new Act which were not in the old, and which have for over a year past been acted upon. If, however, the Manitoba government decides to comply with the request made, I would suggest that the amendment be made by inserting in section 64 after the word "and," in the third line the words, "except in case of land vested in His Majesty in the right of Canada." Although I am much opposed to any such amendment I would rather have it than have the whole Act disallowed.

I have the honour to be, sir, your obedient servant,

W. E. MACARA,
District Registrar.

The Lieutenant Governor to the Secretary of State

GOVERNMENT HOUSE, WINNIPEG, 10th July, 1901.

SIR,—With further reference to your letter of the 2nd instant, regarding certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, passed by the legislature of the province of Manitoba at its session of last year, I have the honour to state

that my government declines to amend the Act by adding to section 64 the provision referred to in your despatch.

I inclose herewith a copy of the communication just received from my Provincial Secretary.

I have the honour to be, sir, your obedient servant,

D. H. McMILLAN,
Lieutenant Governor.

The Provincial Secretary to the Lieutenant Governor.

WINNIPEG, 10th July, 1901.

SIR,—In reply to your communication of the 6th instant, inclosing a copy of a letter from the Honourable the Secretary of State, Ottawa, dated the 2nd instant, respecting certain provisions of the Real Property Act, 63-64 Vic., Chap. 47, I beg to state that the matter of the amendment proposed in the letter of the Secretary of State was referred to the registrar general, and he was consulted as to the advisability of making such amendment. He states that the provision proposed would be very objectionable, and he advises that the government do not give the assurance asked for, even if the threatened disallowance of the whole Act follows as a consequence. He points out that the object of the Dominion government in disallowing the Act could not possibly be attained, as the only result would be the bringing into force again of Chap. 133 of the Revised Statutes of Manitoba, which contains provisions enabling the district registrar to reject plans and surveys if not made by a provincial land surveyor. The Attorney General would, therefore, advise that the Honourable the Secretary of State be informed that the amendments suggested in the letter of 18th June will be made at the next session of the legislature, but that the government of Manitoba will not go any further in the direction proposed by the Honourable the Secretary of State.

I have the honour to be, sir, your obedient servant,

D. H. McFADDEN,
Provincial Secretary.

(Approved 18 July, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 15th July, 1901.

To His Excellency the Governor General in Council:

The undersigned has the honour to refer to his report to Council, dated 6th June, 1901, approved by Your Excellency on 8th June, 1901, in relation to certain provisions of the Real Property Act, 63-64 Victoria, chapter 47, passed by the legislature of the province of Manitoba at its session of last year, and which have been found to be embarrassing and objectionable in so far as they apply to Dominion lands. Pursuant to the terms of Your Excellency's order approving the said report, a despatch was addressed to the Lieutenant Governor of Manitoba calling his attention to the objectionable features of the Act, and stating in effect that unless unqualified assurances were given by his government that at the next session of the legislature the objectionable features to which attention was called would be repealed, there would be no other alternative than to advise the disallowance of the Act. This despatch was acknowledged by His Honour on the 12th June, with the statement that he had transmitted the same to his government with the request to be advised of their intentions at their earliest convenience. On the 15th June a despatch in reply was

addressed by the undersigned to the Lieutenant Governor of Manitoba, pressing upon him the necessity of an early reply in the matter, as the time within which action can be taken here was then growing short. On the 2nd July instant, a despatch was addressed by the undersigned to the Lieutenant Governor inclosing the draft of a proviso, the addition of which to section 64 of the Act, it was considered would remove the objections adverted to.

No satisfactory assurance having been received from the government of Manitoba in answer to the suggestions made in the correspondence above adverted to, the undersigned, this being the last day within which such action can be taken, is compelled to advise Your Excellency that the Act of the legislature of Manitoba, 63-64 Victoria, chapter 47, intituled "An Act respecting Real Property in the province of Manitoba," be disallowed, and he humbly so advises.

Humbly submitted,

R. W. SCOTT,
Acting Minister of Justice.

The Act was disallowed accordingly on 18 July, 1901.

The Secretary of State to the Lieutenant Governor

DEPARTMENT OF SECRETARY OF STATE, OTTAWA, 22nd July, 1901.

SIR,—I beg to inform you that I submitted to His Excellency the Governor General in Council your letter of 10th July instant, advising me that the government of Manitoba declined to give an assurance that at the next session they would amend the Act 63-64 Victoria, chapter 47, by adding to section 64 the short proviso prepared by the law adviser of the Department of the Interior, allowing plans of the survey of Dominion lands, certified in accordance with the Dominion Lands Act, to be filed or registered.

The concession asked for seemed so reasonable and so necessary for the proper administration of the lands of the Crown in accordance with the provisions of the Dominion Lands Act, that surprise is felt at the refusal of your government to acquiesce in a request that affected only the surveys of lands belonging to the Dominion.

In my letter of 6th June last, you were informed that the Act would be disallowed, unless an assurance was given that the objectionable feature to which attention had been called was amended.

A critical examination of the amendment suggested by the Provincial Secretary did not make it clear to the Minister of the Interior that the proposed amendment would be adequate, and it was believed that if it was the desire of your government to meet the wishes of the federal government, there would be no objection to making the proviso explicit, and with that view a clause was drafted which seemed to answer the case perfectly.

It is a matter of very great regret that so important and useful an Act should have to be disallowed, when a promise on the part of the government of Manitoba to make so slight an amendment affecting only surveys of Dominion lands, would have avoided the necessity for taking that extreme course.

The government of the province having however refused to make the reasonable amendment asked for, there seemed no alternative left than to disallow the Act, and I now therefore beg to inclose the certificate of disallowance bearing date 18th July, 1901, and a certified copy of the Order in Council.

I have the honour to be, sir, your obedient servant,

R. W. SCOTT,
Secretary of State

1 EDWARD VII, 1901

2ND SESSION, 10TH LEGISLATURE

(Approved 25 January, 1902.)

DEPARTMENT OF JUSTICE, 31st December, 1901.

These Acts were received by the Secretary of State for Canada on 19th, 23rd and 26th March, and 15th April last. They may be left to their operation without comment, except Chapter 60, "An Act respecting the Manitoba Central Railway Company," and Chapter 61, "An Act respecting 'The Morden and Northwestern Railway Company.'"

Each of these Acts incorporating railway companies with power to construct and operate railways commencing at a point on the international boundary, and are, therefore, subject to the objection which has been formerly stated, arising out of the incapacity of a Legislature to authorize the construction of railways, which are not local works, which connect two provinces or extend beyond the limits of a province. Following the practice heretofore pursued in such cases the undersigned does not on that account recommend disallowance.

C. FITZPATRICK,
Minister of Justice.

2 EDWARD VII, 1902

3RD SESSION, 10TH LEGISLATURE.

(Approved 12 December, 1902.)

DEPARTMENT OF JUSTICE, 24th November, 1902.

These statutes were received by the Secretary of State for Canada on 29th April last, and may be left to their operation without comment except as follows:—

Chapter 43, "An Act respecting Real Property in the province of Manitoba."

In view of the provisions of section 64, which provides that sections 56 and 63 shall not be applicable to plans or surveys of lands belonging to His Majesty in the right of Canada, the undersigned considers that this Act may be left to its operation.

Chapter 44, "An Act respecting the prohibition of the sale of intoxicating liquors in Manitoba."

This Act has been the subject of special correspondence and report, and for the reasons therein stated was left to its operation.

Chapter 65. "An Act to incorporate 'The Occidental Fire Insurance Company.'"

Chapter 67. "An Act to incorporate 'The Prudential Life Insurance Company.'"

Chapter 70. "An Act to incorporate 'The Standard Trusts Company.'"

Chapter 73. "An Act to incorporate 'The Universal Life Assurance and Annuity Company.'"

These Acts incorporating companies and defining their powers, do not expressly limit the business of the companies to the province of Manitoba. It is clear, as has been frequently stated, that the authority of a provincial Legislature in this respect does not extend beyond the incorporation of companies with provincial objects. These Acts must, of course, be construed as limited in their operation to purposes competent to the Legislature under its constituting authority, but it would, in the opinion of the undersigned, avoid misapprehension, if the Acts were expressly limited, and with this

end in view the undersigned recommends that the attention of the Government of Manitoba be directed to them so that the proper amendments may be made.

Chapter 68. "An Act to authorize the Royal Trust Company to do business in the Province of Manitoba."

Chapter 72. "An Act respecting 'The Toronto General Trusts Corporation.'"

These Acts are subject to the observations already made with regard to the legislation of Ontario affecting the Royal Trust Company, and they may for the same reason be left to such operation as they may legally have.

C. FITZPATRICK,
Minister of Justice.

(Approved 14 March, 1902.)

DEPARTMENT OF JUSTICE, OTTAWA, March 13th, 1902.

To His Excellency the Governor General in Council:

There has been referred to the undersigned the petition of the Manitoba Branch of the Dominion Alliance, praying for the disallowance of the statute said to have been passed at the recent session of the Legislature of Manitoba with reference to the proclamation of the Manitoba Liquor Act, and known as the Referendum Act, 1902. No copy of the Act in question has, however, been transmitted to Your Excellency's Government, and as it is said that the voting under the Act is to take place on the 27th instant, it may be important that the matter should be considered without delay.

The undersigned submits herewith a copy of the petition in question and recommends that a copy of this report, if approved, together with a copy of the petition, be transmitted to the Lieutenant Governor of Manitoba for the information of his Government, and such action thereon as he may be advised.

Respectfully submitted.

C. FITZPATRICK,
Minister of Justice.

Petition of the Manitoba Branch of the Dominion Alliance to His Excellency the Governor General.

To His Excellency, the Right Honourable Sir Gilbert John Elliot, G.C.M.G., Earl of Minto, Governor General of Canada:

The humble petition of the undersigned:—

Whereas the Legislature of the Province of Manitoba, pursuant to a mandate of the people given at two plebiscites and to pledges given to the electors, passed the Act known as "The Liquor Act," and the same was duly assented to by Her late Majesty on the fifth day of July, A.D. 1900;

And whereas the Government of the Province of Manitoba did submit the question of the constitutionality of the Act to His Majesty's Privy Council, who gave judgment upholding the same;

And whereas under an amending Act duly assented to by His Majesty on the 29th March, 1901 (chap. 20 of 1 Edward VII), it was enacted that the said Liquor Act should come into force on proclamation of the Lieutenant Governor in Council;

And whereas in accordance with constitutional usage it was the duty of the Government of the Province of Manitoba to immediately advise His Honour the Lieutenant Governor of Manitoba in Council to cause the said Act to be proclaimed;

And whereas the Government of the Province of Manitoba has introduced a Bill for the purpose of holding a referendum and submitting to the vote of the electors

of the Province of Manitoba the question of whether the said Liquor Act should be enforced or not;

Your petitioners therefore pray;—

That Your Excellency will in His Majesty's name disallow and veto any Bill referring to the people in any manner the enforcement of the Liquor Act, on the ground that such a reference would be subversive of the principles of representative and responsible government, inasmuch as it would be contrary to the usage and repugnant to the spirit of the constitution, and, moreover, *injurious* to the dignity and prerogative of the Crown, if not also *ultra vires* of the British North America Act.

On behalf of and by order of the Manitoba Branch of the Dominion Alliance.

Dated 24th February, A.D. 1902.

W. R. MULOCK,
President.

J. CHEGUIN,
Associate Secretary.

(Approved 8 April, 1902.)

DEPARTMENT OF JUSTICE, OTTAWA, April 1st, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a statute of the Legislative Assembly of the Province of Manitoba, intituled "An Act respecting the Prohibition of the Sale of Intoxicating Liquors in Manitoba," 2 Edward VII., chapter 29, assented to on 1st March, 1902, and received by the Secretary of State on 31st ultimo.

This Act is cited as "The Referendum Act, 1902." It provides for submitting to the vote of the electors of the province the question "Are you in favour of bringing the *Liquor Act* into force on the 1st day of June, 1902?" The vote is to take place throughout the province on 2nd April, 1902. The procedure to be followed at the election is laid down, and it is enacted that the returns shall be transmitted to the clerk of the Executive Council, who is to certify the results according to the requirements of the Act, which certificate shall be published in the next issue of the *Manitoba Gazette*, and it is provided that in case it shall appear by such certificate of the clerk of the Executive Council, that forty-five per cent of the total number of voters, as defined by the act, have given affirmative answers to the question, or that at least sixty per cent of all such electors have voted at the election, and that at least sixty per cent of those who have so voted have given affirmative answers to the question, or that at least sixty-two and a half per cent of all the electors who have voted on the question have given affirmative answers thereto, the Lieutenant Governor in Council shall immediately after the expiration of thirty days from the publication of such certificate issue a proclamation bringing the *liquor Act* into force throughout the province, upon, from and after 1st June, 1902, and that thereupon the liquor Act shall accordingly come into and be in force upon, from and after the last mentioned date, and it is provided further that in case no one of the three results above mentioned shall be shown by the certificate of the clerk of the Executive Council, the Lieutenant Governor in Council shall at any time after publication thereof issue a proclamation repealing the liquor Act, and upon, from and after the date of the publication of such proclamation, the liquor Act shall be wholly repealed.

The liquor Act so referred to is chapter 22 of 63-64 Victoria, and it was according to its terms to have come into force on 1st June, 1901. The validity of the Act was, however, contested in the courts, and pending these proceedings an amending Act, 1 Edward VII, chapter 20, was passed, by which it was provided in effect that the liquor Act should not come into force as originally provided, but upon proclamation of the

Lieutenant Governor in Council. Subsequently by a decision of the Judicial Committee of the Privy Council the *liquor Act* was upheld, and now by the Referendum Act, 1902, the conditions, subject to which the *liquor Act* is to come into force or be repealed, are established as already briefly indicated.

Previous to the Referendum Act, 1902, receiving the assent of the Lieutenant Governor, and while it was before the Legislature, there was referred to the undersigned a petition addressed to Your Excellency, dated 24th February, last, on behalf of the Manitoba branch of the Dominion Alliance. The petition recites that the Legislature, pursuant to the mandate of the people given at two plebiscites, and pursuant to pledges given to the electors, had passed the Liquor Act; the Government of the province had submitted the constitutionality of the Act to His Majesty's Privy Council, who gave judgment upholding the same; that by the amending Act of I Edward VII., already mentioned, it had been enacted that the Liquor Act should come into force upon proclamation of the Lieutenant Governor in Council; that in accordance with constitutional usage it was the duty of the provincial Government to immediately advise the Lieutenant Governor to cause the Act to be proclaimed; that the Government had, however, introduced a Bill for the purpose of holding a referendum and submitting to the vote of the electors of the province the question as to whether or not the Liquor Act should be enforced, and the petitioners thereupon pray that Your Excellency will disallow and veto any Bill referring to the people in any manner the enforcement of the Liquor Act, upon the ground that such a reference would be subversive of the principles of representative and responsible government, inasmuch as it would be contrary to the usage and repugnant to the spirit of the constitution, and moreover injurious to the dignity and prerogative of the Crown, if not also *ultra vires* of the British North America Act.

This petition has been supported by several letters from Mr. W. R. Mulock, barrister, of Winnipeg, acting on behalf of the petitioners, and Mr. Mulock has also submitted a document which he styles "The case for the petitioners," in which the grounds stated in the petition are somewhat elaborated, and in which he quotes at considerable length, as supporting the application, various United States and state decisions.

By a minute of Your Excellency in Council of 14th ultimo, upon the recommendation of the undersigned, it was stated that the aforesaid petition had been received, but that no copy of the Act had been transmitted to Your Excellency's Government; that it was said that the voting under the Act would take place on March 22, 1902, and that it might, therefore, be important that the matter should be considered without delay, and it was accordingly directed that a copy of the petition should be transmitted to the Lieutenant Governor of the province for the information of his Government, and such action thereon as he might be advised. Copies of this minute of Council and of the petition were accordingly transmitted to the Lieutenant Governor, and he has replied under date 27th ultimo, transmitting copy of letter addressed to the Lieutenant Governor by the Provincial Secretary, containing the observations of his Government upon the application for disallowance. Copy of the said despatch of 27th ultimo is submitted herewith.

The validity of the Liquor Act was never questioned by Your Excellency's Government, and it has been held by the highest judicial authority to be *intra vires* of the Legislature. That being so there can be no doubt that your Excellency cannot consistently disallow any subsequent Act of the Legislative Assembly suspending or repealing the Liquor Act, or providing as to the time of its coming into operation upon any objection to the constitutional authority of the province to so legislate, and it is clear that Your Excellency's Government is not responsible for, and cannot properly interfere with the policy of such legislation. It is said, as already stated, however, that the project of submitting the question as to whether the Liquor Act shall be brought into force by popular vote, and providing for the enforcement or repeal of the Act according to the result of such vote, is subversive of the principles of representa-

tive and responsible government, inasmuch as it would be contrary to the usage and repugnant to the spirit of the constitution, and moreover, injurious to the dignity and prerogative of the Crown.

The undersigned has failed to discover any grounds for these assertions. The Provincial Legislature, acting as it undoubtedly has done in the circumstances, within the limit of the powers expressly conferred by the British North America Act, has plenary powers of legislation as large and of the same nature as those of the Imperial Parliament itself, and within these limits the Legislature is supreme. Although the principle sanctioned by this referendum Act may be unusual, and even if it were without precedent, it is not therefore in anywise unconstitutional, either in the sense of changing the constitution of the province or otherwise; and, if it were intended to change the constitution of the province, the undersigned observes that that is one of the powers expressly conferred upon the Legislature except so far as regards the office of Lieutenant Governor. Measures affecting the dignity and prerogative of the Crown as represented by the Lieutenant Governor of the province, within the subjects assigned to his jurisdiction, are likewise in the hands of the Lieutenant Governor, acting by and with the advice and consent of the Legislative Assembly, so that while dissenting in all particulars from the foundation in law or fact of the reasons alleged for disallowance, the undersigned apprehends that if these reasons were admitted as alleged, the Act would still remain an effective measure binding upon the country, and justified by the powers of legislation vested in the province under the Act of Union.

The petitioners have evidently been misled in perusal of the American authorities upon which they rely, in failing to distinguish the constitutional principles which govern in the United States from those which apply in Canada. There are no doubt judicial authorities in the United States for the proposition that, subject to certain exceptions and limitations which is not necessary or convenient here to enumerate the question as to whether a general law shall go into effect or not, cannot be referred to a popular vote of the whole state. It is held that the people, in adopting a constitution casting the powers of legislation upon their representatives in assembly, have thereby voluntarily surrendered their direct law making powers, and that the Legislature cannot under the constitution delegate to the people or to any tribunal, powers which are strictly legislative. Such considerations have no place in the British system, where the authority of Parliament is not limited by any constitutional instrument, and where the power of Parliament to delegate its legislative functions is incontestably established. It may be observed that the decisions quoted on behalf of the petitioners might be invoked with equal propriety, as grounds for disallowing the Act of 1901, whereby the Legislature empowered the Lieutenant Governor in Council to bring the Liquor Act into force on any date named by proclamation. It is stated in one of these decisions that if Congress were to empower the President to repeal an existing law or create a new law by the exercise of his will, and announce his decision by proclamation, this would be an absurdity on the part of Congress, and their act would be declared void, as undertaking to transfer the legislative power exclusively to the President, and so to abrogate the constitution. The impropriety of applying any such doctrine to the case, in any of the Canadian provinces, of a statute authorized by the Legislature to come into effect upon proclamation of the Lieutenant Governor is, in the opinion of the undersigned, too manifest to require comment.

It is too late to question further the authority of the Provincial Legislatures to legislate with regard to the liquor traffic in the manner and to the extent affirmed by the Judicial Committee of the Privy Council. The legislation now in question does not transgress these limits. It is competent to the Legislature, and the remedy and recourse of the petitioners must be with the Legislature and the people, by whom the acts and proceedings of the representatives are periodically reviewed.

The undersigned, therefore, does not advise the exercise of the power of disallowance with regard to the Referendum Act, 1902, and he recommends that a copy of

this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government, and to Mr. W. R. Mulock, for the information of the petitioners.

Respectfully submitted,
O. FITZPATRICK,
Minister of Justice.

The Lieutenant Governor to the Secretary of State

GOVERNMENT HOUSE, WINNIPEG, 27th March, 1902.

SIR,—Referring to your despatch, No. 564, dated 19th instant, covering a certified copy of a minute of the Privy Council of the 14th instant, relating to a petition, thereto, attached, of the Manitoba branch of the Dominion Alliance, praying for the disallowance of the statute, passed at the recent session of the Legislature of Manitoba with reference to the proclamation of the Manitoba Liquor Act, and known as the Referendum Act, 1902, a copy of which was transmitted to my Government on the 25th instant, I have now the honour to inform you that my Government have this day advised me as follows:—

“DEPARTMENT OF THE PROVINCIAL SECRETARY, WINNIPEG, 27th March, 1902.

“To His Honour,

The Lieutenant Governor of the Province of Manitoba,
Winnipeg, Manitoba.

“SIR,—I have the honour to acknowledge the receipt of your two communications of March 25th and 26th instants, with enclosures as therein stated, and in reply I am instructed to advise you as follows:—

“Your Government cannot accede to the correctness of the statements contained in the petition of the Manitoba branch of the Dominion Alliance, that the Legislature of the province of Manitoba passed the Act known as the Liquor Act pursuant to a mandate of the people, given at two plebiscites. On the contrary your Government asserts that the said Act was passed in the exercise of the sovereign will of the people of Manitoba expressed through the Legislature, freely chosen by the people of this province, and in the ordinary course of legislation as an exercise of those powers vested in the Legislative Assembly of the province of Manitoba under the British North America Act.

“Even if your Government could admit that a plebiscite of the people could constitute a mandate to a government, your Government cannot admit that the plebiscites referred to in the petition were in any sense a command to enact the Liquor Act in the form in which that Act was passed and in which it is now dealt with by the petition.

“The only plebiscites of which your Government is aware are: (1) The plebiscite taken under the authority of an Act of the Legislative Assembly of Manitoba, being Chapter 24 of the Act of the province of Manitoba, passed in the year 1892, and (2) The plebiscite taken throughout the whole Dominion of Canada under the authority of the Dominion Plebiscite Act, being Chapter 51 of 61 Victoria. The said plebiscites were taken to ascertain and receive an expression of opinion from the electors as to the advisability of the total prohibition of the importation, manufacture and sale of intoxicants, in the one instance, in the province of Manitoba, and the other, throughout the whole Dominion of Canada, and was not intended to bind the Parliament of Canada or the Legislative Assembly of Manitoba to introduce and pass such legislation. The votes cast in the province of Manitoba at the said respective plebiscites were as follows:—1892, for 18,637, against 7,115, and in 1898, for 12,367,

against 2,995, and while the estimated numbers of electors were 44,573 and 49,304 respectively. It will be clearly seen from these votes that only a small percentage of the electors voted thereat, and that there was a decreased ratio in 1898, and it is estimated that the electorate now numbers over 70,000.

"The Legislative Assembly of Manitoba, notwithstanding the said first plebiscite, declined to act and did not act thereon. The Parliament of Canada notwithstanding the said plebiscite did not feel called upon to act thereon. The last of these two plebiscites so taken by the Government of the Dominion of Canada, was directed to the manufacture, sale and importation throughout the whole Dominion, was in no sense a mandate to the Government of the Province of Manitoba and did not affect questions with which the Legislative Assembly of this province had power to deal.

"The construction to be placed upon any pledge given to the electors of the province of Manitoba would appear to your Government, under the constitution, to be a question to be dealt with between those giving such pledges and the electors themselves, rather than that such questions should be made the subject of review by the Governor General of the Dominion of Canada in Council.

"The Government recognizes that legislation of the character of the Liquor Act may be enacted, but it remains to be demonstrated that the electors of this province are in favour of such an Act and the enforcement thereof. The Liquor Act does not attempt to prohibit either the manufacture, importation or exportation of intoxicating liquors, as is made abundantly clear from both the judgment of the Court of King's Bench of the Province of Manitoba, and the reasons of His Majesty's Privy Council, and by section 119 of the said Liquor Act.

"For these reasons, an Act having been passed which went to what your Government is advised is the utmost limits of the powers of the province towards prohibitory legislation, but which falls short of the questions submitted in the plebiscites referred to, and having submitted the Act to the opinion of the courts, your Government felt that, before bringing it into effect, it should be satisfied that the sentiment of the electors of the province is in favour of such legislation before issuing any proclamation. For this purpose, and that your Government may be strong in enforcing the legislation, should the people desire it, the Government at the present session of the Legislature introduced the Referendum Act. That the action of your Government in so doing was believed to be in the public interests of the province, is evidenced by the fact that the Legislative Assembly unanimously passed the Bill without a dissenting vote.

"Your Government must most respectfully decline to accept the statements in the petition that the aforesaid reference 'would be subversive of the principles of representative and responsible Government, and contrary to the usage and repugnant to the spirit of the constitution, and injurious to the dignity and prerogative of the Crown.' On the contrary your Government earnestly urges that in ascertaining the wishes of the people as intended by the Referendum Act, your Government is acting in strict accordance with constitutional principles, in conformity with the Dominion and Provincial precedents, and that its course is supported by subsequent action on the part of at least one other Provincial Legislature.

"The questions dealt with by the said petition are matters wholly within the constitutional right of the province, and your Government would respectfully submit that the wisdom of the Legislative Assembly, acting unanimously within such rights, ought not to be interfered with, and certainly not on the reasons set forth in the petition so transmitted to His Excellency.

"I have the honour to be, sir,

"Your obedient servant,

"D. H. McFADDEN,

"Provincial Secretary."

I have the honour to be, sir,

Your obedient servant,

D. H. McMILLAN,

Lieutenant Governor.

3 EDWARD VII, 1903

4TH SESSION, 10TH LEGISLATURE.

(Approved 23 March, 1904.)

DEPARTMENT OF JUSTICE, January 8th, 1904.

These Acts were received by the Secretary of State for Canada on 31st March, 1903.

Chapter 41, intituled "An Act respecting the Revised Statutes of Manitoba, 1902," provides for the bringing into force of the recent revision of the public statutes of Manitoba. Some of these Acts so revised have been from time to time the subject of unfavourable comment by the predecessors of the undersigned. In recommending, therefore, that the statute in question be left to its operation the undersigned desires to renew these objections, leaving them to such determination as has been thought expedient heretofore.

Chapter 53, intituled: "An Act respecting the Dominion Permanent Loan Company."

This Act relates to a company incorporated by authority of the Legislature of Ontario, and it provides that the company shall be a body corporate and authorized to carry on business in Manitoba to the same extent as it is entitled under its charter granted in the Province of Ontario. Such legislation is objectionable for reasons which the undersigned has mentioned in previous reports. The local Legislature has only authority to incorporate companies for provincial purposes, and the company in question having been incorporated for the provincial purposes of Ontario, it is, the undersigned conceives, very questionable whether the capacity of the company may be enlarged by the Legislature of another province. The undersigned conceives, however, that his duty with regard to the matter is accomplished by calling attention to the serious question which the Act presents.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

34 EDWARD VII, 1904

To His Excellency the Governor General of Canada in Council:

The Petition of The Merchants Bank of Canada, humbly complaining,

SHEWETH AS FOLLOWS:

(1) On and prior to the fifth day of March, one thousand eight hundred and eighty-nine, the town of Emerson was indebted to your petitioners in the sum of forty thousand seven hundred and ninety-eight dollars (\$40,798), being the amount of a judgment recovered by your petitioners against the said town in the Court of Queen's Bench for Manitoba on or about the fifteenth day of October, A.D. 1883, and also in addition to the above amount for interest on the said judgment at the legal rate from the date thereof.

(2) On and prior to the said fifth day of March, A.D. 1889, the town of Emerson was in insolvent circumstances, and commissioners had been duly appointed by the Government of the Province of Manitoba to investigate the affairs of the town and of the town of West Lynne, and shortly before the date last aforesaid the said commissioners reported that the amount of indebtedness which the said towns could fairly be asked to pay was the sum of one hundred and six thousand, five hundred and thirty-one dollars and ninety-five cents (\$106,531.95).

(3) Thereafter the Legislature of the Province of Manitoba passed an Act respecting the town of Emerson, being Chapter 47 of the Revised Statutes of Manitoba passed in the 47th year of the reign of Her late Majesty Queen Victoria, which provided, amongst other things, for the union of the town of Emerson and the town of West Lynne as one town, to be called the town of Emerson, with the object of extinguishing the old debt, and further provided for the issue of debentures of the said town to the amount of one hundred and five thousand dollars (\$105,000) payable in twenty years, with interest at three per cent payable annually, such interest to be guaranteed by the Government of the Province of Manitoba as set forth in the said Act.

(4) Under and by the Act of 47 Victoria it was provided in the event of the province paying any amount on account of interest on the debentures therein referred to, that (section 8) "such payments shall constitute a debt from the said town of Emerson to Her Majesty."

(5) At the time of the passage of Chapter 47, 52 Victoria, the town of Emerson was, and subject to the legislation herein referred to still is, the owner of a valuable steel bridge across the Red river at Emerson, which bridge cost in the neighbourhood of two hundred thousand dollars (\$200,000) to construct, and is a most valuable asset, as it is required by both the Canadian Northern Railway Company and the Canadian Pacific Railway Company in connection with their business, and would be useful to both of said railways, and is at present used by the Canadian Northern Railway Company for running of its trains.

(6) In and by Chapter 47 of 52 Victoria, it is provided that: "the said bridge shall be conveyed to the Government of Manitoba as security for the liability assumed under the said Act, and that in case the debt of the town of Emerson to the Government reaches the sum of \$5,000 the said bridge may be sold, and the proceeds of the sale thereof held by the Provincial Treasurer and applied in payment of the said debt and the interest and principal of debentures issued under the said Act"—the said bridge thereby becoming a direct security for the holders of the said debentures, including your petitioners.

(7) Relying upon the terms and conditions of the said Act being carried out in good faith, your petitioners accepted debentures to the amount of fourteen thousand seven hundred dollars (\$14,700) forming part of the issue of one hundred and five thousand dollars (\$105,000) aforesaid in extinguishment of their said judgment, and your petitioners have since acquired further debentures, part of the issue aforesaid, to the amount of seven thousand and fifty dollars (\$7,050), making the total debenture issue of twenty-one thousand seven hundred and fifty dollars (\$21,750) now and for some years past held by your petitioners.

(8) Since the investigation by the commissioners as aforesaid the town of Emerson has greatly improved its position. It has shared in the general prosperity of the Northwest, has increased in population, and property therein has increased in value, and the town is in a much better position to pay its indebtedness than it was on and prior to the fifth day of March aforesaid when the said investigation was made, as hereinbefore set forth.

(9) The Legislature of the Province of Manitoba has recently passed an Act respecting the town of Emerson, being Chapter 14 of 4 Edward VII., a certified copy of which Act is annexed to this petition, which forfeits the interests of your petitioners and all other holders of said bonds in said bridge, and provides that the title to the said bridge shall vest absolutely in the Government of the Province of Manitoba as payment for certain moneys advanced and to be advanced by way of interest on the debentures hereinbefore referred to, thereby defeating and forfeiting the security of your petitioners and other holders of the said bonds in respect of the said bridge, and forfeiting the agreement under which the said bonds were accepted by your petitioners and their security by way of judgment surrendered.

(10) The said Act provides that (section 1): "there shall be appropriated from and applied out of any trust funds of the province such sum or sums as shall be sufficient to pay one-third of the amount of principal or face value of each of the debentures of the town of Emerson for one hundred and five thousand dollars issued as aforesaid," and that (section 17): "with respect to any debentures forming part of the one hundred and five thousand dollar issue aforesaid which may be outstanding at the time of the maturity thereof and which may not be purchased under the provisions of this Act, it is hereby declared that all claims for the amount of such debentures respectively, together with interest thereafter to accrue thereon, shall be postponed and be made subject to and subsequent to the claim of the province for moneys advanced as aforesaid so long as any portion of the whole amount advanced by the province, together with interest thereon, shall remain unpaid and unsatisfied, and it shall not be lawful at any time during such period for any proceedings to be instituted or taken against the town or school board, or the trustees of the school district, or the council of the said town, or against any officer or employee of the said school board or the said council, by any holder of the said debentures, or any part thereof, for the collection of either the principal of the said debentures or the interest thereon or for enforcing in any other manner whatsoever the claims of the said holders of said debentures against the property or revenues of said town or school district; and it shall not be lawful while the province of Manitoba is a creditor of the said town for a sheriff or bailiff or any other officer to make any levy upon the property of the said town or of the school board for the said district at the instance of any unsatisfied debenture holder of said town or any other person or persons, corporation or corporations whatsoever and whomsoever."

(11) Your petitioners attended before the Committee of the Legislature of the Province of Manitoba when the said Bill was under consideration, and by counsel protested against the passage of the said Act, and urged that said Act, if passed, would operate as a forfeiture of your petitioners' rights, and would be prejudicial to your petitioners as holders of the debentures as aforesaid, and was an unwarranted interference with the bridge security then held by the Government of the Province of Manitoba in trust for your petitioners and other debenture holders.

(12) Your petitioners point out that the said Act not only confiscates your petitioners' security in respect of the said bridge and ruins the contract on which the said bonds were issued to and accepted by your petitioners and on which your petitioners gave up the security of their judgment, but that it takes away your petitioners' right to enforce payment of their claim against the said town as creditors thereof.

(13) Your petitioners further point out that such legislation is contrary to the best interests of the province and of the Dominion of Canada, and will have the effect of shaking the confidence of financial institutions in the securities of the country, and that it is in the interests of the country at large and of your petitioners that the said Act should be disallowed.

(14) Your petitioners fear that unless the said legislation is disallowed immediately the said Act may be proclaimed and the province may pay out moneys thereunder.

Your petitioners therefore pray:

(1) That Your Excellency in Council will disallow Chapter 14 of the Statutes of Manitoba passed in the fourth year of the reign of His Majesty King Edward VII., pursuant to the provisions of the British North America Act.

And your petitioners will ever pray.

FOR THE MERCHANTS BANK OF CANADA,
L.S.

(Approved 4 March, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd February, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit a petition addressed to Your Excellency in Council by the Merchants Bank of Canada, which has been presented by the bank to the undersigned, praying for the disallowance of an Act respecting the town of Emerson, passed by the Legislature of the Province of Manitoba, and assented to on the 8th February, 1904.

The undersigned recommends that a copy of this petition, and of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, with a request for the observations of his government upon the allegations and prayer of the petition. Upon receiving the reply of the Lieutenant Governor the matter should be referred to the undersigned for further consideration.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Transmitted to Department of Justice by Lt.-Col. Thompson, M.P., 21 March, 1904

WHITBY, CANADA, March 18, 1904.

Lieut.-Col. THOMPSON,
House of Commons,
Ottawa, Ont.
Re Emerson Bonds

DEAR COLONEL,—Not having heard from you since I last wrote and being charitably disposed, I conclude that you are very busy. I promised to get you a little more data *re* Emerson bonds. Now, listen to my tale of woe.

1. My father-in-law, the late John MacLaren, of Wakefield, Quebec, died, leaving two of his brothers executors of his will.

2. The said executors under the provisions of Manitoba Statutes, 42 Victoria, Chapter 3, and a by-law of the town of Emerson, intituled: "A by-law to raise \$35,000 to be expended in the construction of an ordinary traffic and passenger bridge across the Red river at Emerson, and to authorize the issuing of debentures of the town of Emerson therefor," purchased thirty-five debentures of the town of Emerson at \$1,000 each, and by virtue of another by-law, intituled: "A by-law to raise by way of loan the sum of \$8,000 to be expended in payment of the purchase money for the steam fire-engine heretofore purchased by the council, and to authorize the issuing of debentures of the town of Emerson therefor," the said executors purchased eight debentures of the town of Emerson for the sum of \$1,000 each, making together a purchase of \$43,000 of debentures of the town of Emerson.

3. At the time of the purchase of the debentures above mentioned, the town of Emerson had no indebtedness other than that represented by said debentures, and the executors considered that their security was perfectly ample and satisfactory. (They evidently did not consider the unexpected possibility of the local government taking them by the throat as they afterwards did.)

4. After the purchase of the said debentures the town of Emerson apparently went crazy, and incurred other large debts for the construction of railway works and other purposes, until by 1889 that had a total indebtedness of \$300,000.

5. By an Act of the Local Legislature of the province, assented to on 5th March, 1889, and being 52 Victoria, chapter 7, provision is made for the issue by the town of Emerson of debentures for the amount of \$105,000, payable with interest at the

rate of three per cent per annum, and it is further provided by the said statute that said debentures are to be delivered to the creditors of the said town pro rata according to the amount of the claim of the creditors, as shown by the statement to be prepared according to a certain method by the clerk and treasurer of the town. It is further provided by the said statute that it was not to be lawful for creditors to levy upon the property of the town during the continuance of the Act, &c., &c. The term of twenty years under the Act has yet six years to run.

6. Under the said Act the executors were compelled to accept new debentures payable in twenty years with interest at three per cent (for an amount not exceeding twenty-five per cent of their claim). In the preamble to the said Act the principal creditors of the town, with one exception, were said to be willing to accept the settlement. The executors of my father-in-law's estate were the one exception.

7. The present move of the town and the government is to compel us to accept one-third of the present holdings, or in other words about nine per cent of our original advance, one-third of one-quarter.

I have great sympathy always for a client when I find them unfortunate, or being wronged in any way, but I may say that this feeling of sorrow or regret is not any the less in this case owing to the client being my own wife. One of the banks, it seems to me the Merchants Bank, holds some of these bonds, and they attended the legislature in Winnipeg and opposed the present Act. However, it was forced through in spite of opposition, and it seems to me our only hope is to have it disallowed at headquarters.

I could have written to our own member, William Ross, to see the minister, but this transaction being of a quasi legal nature, I have seen fit to presume upon my friendship for you to trespass upon your time. This class of legislation (otherwise highway robbery) should be stopped by any or all means, as it is a menace to public confidence in the security of municipal bonds, and should be contrary to public policy. In Ontario here you will agree with me that municipal bonds have been considered an excellent security. In parts of the United States the municipal bonds are not considered good security, and it is owing to legislation similar to what Manitoba has proposed. Just think of it—our \$43,000 on a first mortgage upon the town was expended in building a passenger bridge across the river and in purchasing fire protection, both necessary and commendable expenditures. Then come the boomsters, public contractors, railway men, &c., and get up a furor, induce the town to get large expenditures, issue bonds to the contractors, &c., in payment, though the acceptors of the bonds knew of our prior holdings; then the government takes hold of us and says, "You must rate pro rata with them." Is it any wonder we were the one person who objected to the legislation in 1889?

Let me hear from you as soon as you can possibly do so, and I feel under compliment to you.

Yours truly,

THEO. A. MCGILLIVRAY.

Transmitted to Secretary of State 18 March 1904

WINNIPEG, March 18, 1904.

SIR DANIEL HUNTER MCMILLAN,
Lieutenant Governor of Manitoba,
Winnipeg.

SIR,—I have the honour to acknowledge the receipt of your communication forwarding a copy of a petition of the Merchants Bank of Canada addressed to His Excellency the Governor General in Council, praying for the disallowance of an Act respecting the town of Emerson passed at the last session of the Legislature of this

province, and the request of His Excellency to be furnished with the observations of your Government upon the allegations and prayer of the said petition.

Your Ministers have considered the several allegations contained in the said petition, and beg to submit that the said Act should not be disallowed by His Excellency for the following amongst other reasons:—

1. The allegations of fact set forth in and by the said petition are not such as call for or would justify His Excellency in Council in exercising the power of disallowance.

2. The said matters dealt with in and by the said Act are of a merely local or private nature in the province, and within the exclusive power of the Legislative Assembly to enact under the provisions of "The British North America Act, 1867."

3. The disallowance of the said Act would be a direct usurpation of the well-established doctrine of provincial autonomy.

4. The said Act received the unanimous endorsement of the Legislative Assembly after a most careful consideration of its provisions.

5. The said Act does not contain provisions which are open to objection upon grounds of public policy, as being calculated to affect injuriously the interests of the Dominion, or of any particular portion thereof, which are essential characteristics for the veto power to be exercised, and, being within the power of the Legislature to enact, it would be an unwarrantable and unjustifiable act on the part of the Dominion Executive to disallow the said Act.

6. The said Act was proclaimed in force on the 12th day of February, A.D. 1904, and under it the Provincial Treasurer has acquired more than one-half of the debentures referred to in said Act, by the payment of the sum of \$18,000, and the municipal election provided for has also been held, and there are now a Mayor and Council of the town of Emerson duly in office.

7. Certain holders of more than one-half of the debentures referred in the said Act were, prior to the passage of said Act, and now are, strongly in favour of the provisions contained therein, and requested the Government to take the condition of the town of Emerson into consideration and have the same dealt with by the Legislature of this province, and promptly after the said Act was proclaimed in force, and without solicitation, took advantage of its provisions, as hereinbefore mentioned, and are well satisfied with the settlement effected.

8. Your Ministers are familiar with the financial condition of the town of Emerson, and aver the fact that the sum authorized to be advanced by the Government under the Act objected to, and to be repaid by said town, as therein provided, is all that the said town is able to pay and can pay, and at the same time reasonably supply ordinary municipal requirements and maintain its public schools, which are of pressing necessity.

9. Your Ministers also allege that at the time of the investigation of, and report upon, the affairs of the town of Emerson in the year 1889, the said town was not financially able to pay to its creditors, as stated, the sum of \$105,000, and submits that the strongest proof of this statement is the fact that the Government was obliged to pay regularly the interest on the debentures issued for the said amount, pursuant to Chapter 47 of 52 Victoria, referred to in the petition. Up to the date of the passing of the present Act objected to the Government has paid on that account the sum of \$38,611.26. With interest added the amount aggregates the sum of \$52,451.81.

10. Your Ministers deny the accuracy of the statement contained in paragraph 8 of the petition that since the investigation of the affairs of the town of Emerson, as aforesaid, the said town has greatly improved its position and has shared in the general prosperity prevailing in the west. The fact is directly the reverse, as evidenced in the marked reduction of the value of assessable property of the town between the periods of 1889 and the year 1903. In the year 1889 assessment was \$360,000; in the year 1903 the assessment was \$227,000, a reduction of \$133,000.

11. In further refutation of the said allegation in the petition that said town of Emerson has shared in the general prosperity of the Northwest, your Ministers believe that such is not the case, but on the contrary, up to the time of the passage of the Act objected to in the petition, the said town was in a dormant and unprogressive condition, due to the outstanding heavy debt with which it was impossible for the said town to successfully cope.

12. Your Ministers desire to direct the attention of His Excellency in Council to the fact that prior to the passage of the Act objected to, reliable evidence was adduced that on account of the heavy debt of the town, the disposition of real property therein was practically at a standstill; no money was procurable on the security thereof at a fair valuation and at a reasonable rate of interest; excessive insurance rates were demanded and, generally, the business of the merchants and others in the town was carried on under great disadvantage, and it was only after the most mature consideration of your Ministers as to the amount which the town could pay of the outstanding indebtedness that effect was given to the provisions of the Act objected to.

13. Regarding the bridge referred to in section 9 of the petition, your Ministers desire to draw the attention of His Excellency in Council to the provisions of section 22 of said Chapter 47 of 52 Victoria, referred to in the said petition, the same being as follows:—

“The railway and traffic swing bridge across the Red river between the old town of Emerson and West Lynn is hereby conveyed to Her Majesty the Queen, as security for the liability assumed by the Government of Manitoba hereunder; such bridge shall be managed by the Provincial Lands Commissioner, and may be leased from year to year in the best interest of the town, in order to afford a revenue. All sums received from said bridge shall be credited to the said town of Emerson. In case the debt of the said town of Emerson to the Government ever reaches the sum of five thousand dollars, the said bridge may be sold and the proceeds of the sale thereof held by the Provincial Treasurer and applied in payment of the said debt, and the interest and principal of the said debentures issued under this Act.”

And it was submitted that this provision constituted the said bridge a security to Her Majesty for the liability assumed by the Government, and that, if sold, the proceeds were to be applied in payment of the said debt to the Government and not *pro rata* amongst the debenture holders; and further, that the amount due the Government at the time of the passage of the Act objected to, with interest added, viz, \$52,451.81, was more than the then value of the said bridge, the same having been built years ago and become deteriorated by non-repair, so that at the time of the passage of the Act objected to, the said bridge did not, and could not, constitute an asset or security to the outstanding debenture holders, as alleged in the petition.

14. It is true that the said bridge is now used for railway purposes by the Canadian Northern Railway Company, but it is pointed out that this was only rendered possible by the said Railway Company at their own expense, practically rebuilding the abutments for the superstructure, and making other expenditures, involving an outlay of some thousands of dollars, and, it is submitted, that whatever benefits should or may accrue in this respect, should enure to the Government as being, as before pointed out, primary or preferential creditors of the town to the extent of the full value of the said bridge prior to the making of such repairs.

15. With respect to the objection to the provisions of section 17 of the Act in question, your Ministers desire to point out that they are merely a continuation of the restrictions provided for by section 28 of the former Act, which was as follows:—

“28. It shall not be lawful while this Act continues in force for the sheriff or bailiff, or any other officer to seize or make any levy upon the property of the said town, or of the School Board for the said district, nor shall any proceedings be taken against the said town or School Board or the trustees of the school district of the Council of the said town, or against any officer or employee of said School Board or

said Council for the purpose of enforcing, whether against the property or revenues of said town or school district, claims for debts incurred by said town or school district prior to the passing of this Act, or for interest thereon, except so far as this Act provides for payment of the same."

And the disallowance of the present Act would, in any event, only revive this provision, and the Merchants Bank of Canada and other creditors of the town would have no greater rights to enforce payment of their claims than they now have under the present Act.

16. Your Ministers desire to direct the attention of His Excellency in Council to the fact that debenture holders, already having availed themselves of the provisions of the present Act, consist of either persons residing in the province, or representing corporations therein, who had and have a full knowledge of all the facts and circumstances herein set forth as to the financial position of the town of Emerson at the time of the passage of the Act objected to.

17. On the grounds herein set forth, and on the broad principles of justice and right, your Ministers strongly urge that His Excellency in Council will refuse to entertain the prayer contained in the said petition.

I have the honour to be, sir,

Your obedient servant,

D. H. McFADDEN,
Provincial Secretary.

(Approved 16 September, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, September 9, 1904.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 14 of the Acts of the Legislative Assembly of Manitoba, assented to on 8th February last, and received by the Secretary of State on 25th February, intituled "An Act respecting the town of Emerson."

This Act recites in effect that the town of Emerson is unable to pay the interest accrued upon its debentures; that it will not be able to pay and satisfy the interest to accrue in the future or the principal of the debentures upon maturity, and that a large number of the debenture holders are willing to accept the settlement provided for in the Act. The Act proceeds to authorize the government of the province to purchase the outstanding debentures of the town for one-third of their face value, and to give the government a preferential lien upon the town property for these payments, which are to bear interest at four per cent. For the interest already in arrears and paid by the government, amounting at the date of the Act to \$38,611.26, the town is to transfer a bridge to the government, and the claims of the debenture holders outstanding at the time of the maturity of the debentures are to be postponed to the claims of the province.

The Merchants Bank of Canada, who are the holders of certain of these debentures, petitioned Your Excellency in Council to disallow this Act as unjust and as being especially prejudicial to the interests of the bank in view of the circumstances set forth in the petition; alleging also that the legislation is contrary to the best interests of the province and of Canada, and will have the effect of shaking the confidence of financial institutions in the securities of the country.

Another one of the bondholders has also objected to the Act upon similar grounds.

The objections have been communicated to the Government of Manitoba, who replied urging that the statute affects matters of a merely local or private nature in

the province, and is within the exclusive authority of the Assembly, and the local government strongly urges Your Excellency not to exercise the power of disallowance.

The undersigned entertains no doubt that the Act is within the authority of the legislature, and whatever views Your Excellency's Government may entertain as to the propriety of legislation intended to reduce or affect the obligation of a municipality to its debenture holders, such view cannot in the opinion of the undersigned either consistently with the constitution or practice which has hitherto prevailed be invoked as justifying the disallowance of this Act. The legislation is within the scope of the subjects assigned exclusively to the provinces. The Legislative Assembly is the constitutional judge of the objections which are urged by the petitioners, and it is to the Assembly which they must look for redress if any. For these reasons the undersigned recommends that the power of disallowance be not exercised, and further that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba and to the Merchants Bank of Canada.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

DEPARTMENT OF JUSTICE, OTTAWA, October 24, 1904.

The Honourable the Attorney General of Manitoba,
Winnipeg, Man.

SIR,—Referring to Chapter 7 of the Manitoba Acts of 1904, amending the County Courts Act, may I ask you to explain section 1 (a) for my information in reporting upon the validity of the Act. I would like to know how and when the newly created Southern Judicial District of Manitoba was so created, and whether it corresponds territorially with the Southern Division of the Eastern Judicial District? It seems to me that the section is upon its face *ultra vires*, as it is I should suppose beyond the power of the legislature to appoint a judge. I imagine, however, that there must be some explanation of the matter, and I would be very glad to hear from you upon the subject before submitting report.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

WINNIPEG, November 2nd, 1904.

E. L. NEWCOMBE, Esq.,
Deputy Minister of Justice,
Ottawa, Ont.

SIR,—I have the honour to acknowledge receipt of your letter of the 24th October, inquiring as to section 1 (a) of Chapter 7 of the Manitoba Statutes of 1904. The proposed new Southern Judicial District of Manitoba was provided for by Chapter 55 of the Statutes of 1904, and also by certain amendments to the County Courts Act, King's Bench Act, Surrogate Courts Act, &c., necessitated by the creation of such new Judicial District, and Chapters 41 and 55 relating to such new judicial district have been brought into force by proclamation, but the other statutes referred to have not yet been proclaimed in force, as the buildings have not yet been completed. As to Section 1 of Chapter 7, it was considered necessary to make this provision so that when all the Acts are proclaimed there would be a judge with jurisdiction throughout the newly created Southern Judicial District, and the authorities relied upon for this

are as follows: In *re* the County Courts of British Columbia, 21, Supreme Court Reports, 446, and Chapter 28 of the Dominion Statutes of 1891. It seems to me after a careful perusal of this latter Statute and of the decision in the quoted case, that the section referred to is not objectionable, and indeed is necessary to enable the present County Court Judge of the Southern Division of the Eastern Judicial District to discharge the duties of the County Court Judge of the new Southern Judicial District.

I have the honour to be, sir,

Your obedient servant,

GEORGE PATTERSON,
Deputy Attorney General.

(Approved 16 November, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last session of the legislatures thereof (1904), as follows:—

* * * * *

Manitoba; 3 and 4 Edward VII; received by the Secretary of State on 25th February, 1904.

Chapter 7, intituled "An Act to amend 'The County Courts Act,'" is reserved for a further report.

Chapter 14, intituled "An Act respecting 'The Town of Emerson,'" has already been considered and left to its operation by Order in Council of 16th September last.

Chapter 70, intituled "An Act to incorporate 'The Empire Loan Company.'"

By this Act a company is incorporated for the purposes apparently of carrying on the business of a building, loan and investment society and to borrow and receive money upon deposit.

Sections 20 and 21 provide that the company may appoint agencies or local advisory boards or directors in any city, town or village in the Dominion of Canada, and that the company may acquire and hold lands in other provinces of the Dominion by gift, purchase, or as mortgagee or otherwise as fully and freely as private individuals, and carry on business there. These extra-provincial powers are for the reasons already stated with regard to a New Brunswick Act *ultra vires*, and the undersigned recommends for the same reason that inquiries similar to those recommended in the case of the New Brunswick Act be addressed to the Lieutenant-Governor of Manitoba. After receiving his answer, the matter will be further considered by the undersigned.

Chapter 77, An Act respecting "The Northern Extension Railway Company," is objectionable as authorizing the company to build a railway to the eastern or southern boundary of the province, because railways connecting the province with any other province or extending beyond the limits of the province are not within provincial authority.

The undersigned does not, however, on account of this objection recommend disallowance. The question is one which if necessary may be determined by the courts.

The undersigned recommends that the remaining statutes of Manitoba be left to such operation as they may have.

* * * * *

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province, shall be communicated to the Lieutenant Governor of the province.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

4-5 EDWARD VII, 1905

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Manitoba, passed in the fourth and fifth years of His Majesty's reign, 1905, and received by the Secretary of State for Canada on 9th February last.

These Acts may, in the opinion of the undersigned, be left to such operation as they may have, with the exception of the following, as to which special reports will be made:—

Chapter 48, intituled: "An Act respecting Manitoba land surveyors."

Chapter 54, intituled: "An Act to incorporate 'The Assiniboine Fire Insurance Company'."

Chapter 60, intituled: "An Act to incorporate 'The Manitoba Investment Agency, Limited'," and

Chapter 73, intituled: "An Act to incorporate 'The Winnipeg Fire Assurance Company'."

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 13 November, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that by Chapter 54 of the Statutes of Manitoba, 1905, intituled: "An Act to incorporate 'The Assiniboine Fire Assurance Company'"; and Chapter 73 of the Manitoba Statutes for the same year, intituled: "An Act to incorporate 'The Winnipeg Fire Assurance Company'," companies are incorporated with power to make and effect contracts of insurance with any person or persons, body politic or corporate, against any loss or damage by fire or lightning to any houses, stores or other buildings whatsoever, and on any shipping or vessels whatsoever, or whithersoever proceeding against loss or damage by fire, &c. The Acts contain no provision limiting the business of the companies to the province of Manitoba. The powers of the companies are defined in general terms, so that the Acts read as if an unlimited power to do business were conferred in respect of the kinds of business defined as within the scope of the companies' powers.

Inasmuch as it is incompetent to a provincial legislature to incorporate a company except for provincial purposes, or with power to carry on its business in other provinces, the undersigned considers that these Acts should be amended so as to expressly limit the business of the companies to the province of Manitoba, and he recommends that an inquiry be made of the Lieutenant Governor to ascertain whether his government will promote and have enacted such amendment within the time limited for disallowance.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 13 November, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that by Chapter 60 of the Acts of Manitoba, 1905, intituled

“An Act to incorporate ‘The Manitoba Investment Agency, Limited,’”

a company is incorporated with power to acquire, hold and own lands and real and personal property of every description in Manitoba or elsewhere, or any estate or interest therein, by purchase, exchange, or in any other manner, and to pay therefor by money or by giving in exchange therefor land and real and personal property, fully or partially paid up stock in the company, or the company's debentures, or partly by one and partly by others of the said methods, to promote immigration and colonize the lands of the company and of others, to build upon, farm and improve the said lands, &c.

These powers are plainly in excess of any within the authority of a provincial legislature to grant. Not only is the business of the company not limited to the province, but the company is expressly given power to acquire, improve and deal in lands and other property situate outside of the province.

It will be the duty of the undersigned, therefore, to recommend the disallowance of this Act unless satisfactory assurances are obtained from the government of Manitoba that proper amendments will be made within the time provided for disallowance to limit the business of the company to provincial objects, and the undersigned recommends that inquiry be made of the Lieutenant Governor to ascertain whether such amendments will be made within the time so limited.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 17 November, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, 10th November, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 48 of the Statutes of Manitoba, 1905, intituled

“An Act respecting Manitoba Land Surveyors.”

By section 35 it is provided that no person shall act as a surveyor of lands within Manitoba unless he has been duly authorized to so practice under this Act, or had been so authorized before the passing thereof, according to the laws then in force, and shall have become duly registered, and shall continue to be registered under the provisions of this Act, under a penalty of one hundred dollars besides costs.

Section 62 provides a penalty against any person who knowingly and wilfully defaces, alters or removes any mound, or land mark, post or monument placed by any Manitoba land surveyor, or by any Dominion land surveyor under the provisions of the Dominion Lands Act to mark any limit, boundary or angle of any township or section, or any other legal subdivision, lot or parcel of land in Manitoba.

Upon reference of this statute for the consideration of the Surveyor General he reports that section 35 would apparently prevent a Dominion land surveyor, who has not become registered under the Act, from surveying Dominion lands within the province, and as to section 62, he says that the Dominion Lands Act directs that in certain cases Dominion land surveyors shall remove the marks of original surveys

and erect new ones elsewhere, and that this section would apparently become an offence under the provincial Act.

Doubtless it was not really intended by this Act to affect Dominion land surveyors in the survey of Dominion lands, but the Act may be, according to its letter, construed otherwise, and the undersigned therefore considers that the Act ought to be amended so as to make it clear that it is not to affect Dominion land surveyors in the execution of their duties under the Dominion Lands Act.

The undersigned recommends, therefore, that the attention of the Provincial Government be called to the matter, and that the Lieutenant Governor be requested to inform Your Excellency's Government whether the suggested amendment will be made within the time limited for disallowance.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor 11 December, 1905

GOVERNMENT HOUSE, WINNIPEG, December 1, 1905.

The Honourable the Provincial Secretary,
Winnipeg.

SIR,—I have the honour to acknowledge the receipt of your communication forwarding a letter from the Lieutenant Governor transmitting copy of a report of the Minister of Justice upon Chapter 48 of the Statutes of 1905, entitled "An Act respecting Manitoba land surveyors," and beg that you will communicate to His Honour the decision of the government of this province to make such amendments to the Act referred to as will meet the objections urged thereto in the report of the Minister of Justice, and that such amendments will be introduced at the next session of the legislature.

I have the honour to be, sir,

Your obedient servant,

GEO. PATTERSON,
Deputy Attorney General.

Transmitted to the Secretary of State by the Lieutenant Governor 11 December, 1905

GOVERNMENT HOUSE, WINNIPEG, December 7th, 1905.

The Honourable,
The Provincial Secretary,
Winnipeg.

SIR,—I have the honour to acknowledge the receipt of copies of reports of the Minister of Justice upon Chapters 54, 73 and 60 of the Acts of the Province for the year 1905, sent to you by the lieutenant governor and forwarded to this department, and I am instructed to inform you in reply, that the several companies incorporated by the Acts referred to, have been furnished with copies of the reports and informed that it will be necessary for them to apply to the legislature at its next session for such amendments to their Acts of Incorporation as will meet the objections set forth in the reports of the Minister of Justice, and that in case they fail to do so, the several Acts will be disallowed. The respective companies will have to apply for such amendments by private bills and pay the necessary fees, and if they do so, the Government of Manitoba will in every way facilitate the passage of such amendments.

I have the honour to be, sir,

Your obedient servant,

GEO. PATTERSON,
Deputy Attorney General.

(Approved 23 December, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, 16th December, 1905.

To His Excellency the Governor General in Council:

There has been referred to the undersigned the despatch of the Lieutenant Governor of Manitoba, dated 11th instant, transmitting copy of a letter from the Department of the Attorney General, forwarded to the lieutenant governor by the provincial secretary, in which, referring to Chapters 54, 60 and 73 of the Acts of Manitoba, 1905, it is stated that the several companies incorporated by these Acts have been furnished with copies of the reports of the undersigned, approved by Your Excellency in Council on 13th November last, and informed that it will be necessary for them to apply to the legislature at its next session for such amendments to these Acts as will meet the objections set forth in the said reports of the undersigned, and that in case they fail to do so, the several Acts will be disallowed. The Deputy Attorney General adds that the respective companies will have to apply for such amendments by private bills and pay the necessary fees, and if they do so the Government of Manitoba will in every way facilitate the passage of such amendments.

The undersigned observes that the time for the disallowance of these Acts will expire on 9th February next, and it is necessary, therefore, that Your Excellency's Government should receive definite and satisfactory assurances from the Government of Manitoba before that date that the necessary amendments will be made. The communication of the lieutenant governor already received cannot be said to amount to such an assurance, as the question of these amendments seem to be thereby left to the companies themselves.

The undersigned considers, therefore, that a despatch in reply should be sent to the lieutenant governor informing him that Your Excellency's Government will be under the necessity of disallowing these Acts unless the Government of Manitoba, by reason of its communications with these companies, or otherwise, is prepared within the time limited for disallowance to undertake that the amendments will be made at the next ensuing session.

As to Chapter 48 of the Manitoba Acts of 1905, respecting Manitoba land surveyors, the undersigned observes that the local government have decided to make such amendments as will meet the objections urged in the report of the undersigned, and that such amendments will be introduced at the next session of the legislature. In these circumstances the undersigned does not advise Your Excellency to take any further steps with regard to this Act.

Humbly Submitted,

C. FITZPATRICK,

Minister of Justice.

WINNIPEG, MAN., December 15, 1905.

The Honourable

The Minister of Justice,
Ottawa, Ont.

Re Manitoba Land Surveyors' Act.

SIR,—I have the honour to submit herewith for your consideration draft of an Act to amend "The Land Surveyors' Act."

Will you kindly advise me if this Act will answer the requirements set forth in your report to council of the 10th November last.

I have the honour to be, sir,

Your obedient servant,

GEORGE PATTERSON,

Deputy Attorney General.

BILL.

AN ACT to amend "The Land Surveyors' Act."

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba enacts as follows:—

1. Section 35 of the Land Surveyors' Act being chapter 48 of the Statutes of Manitoba enacted at the session held in the fourth and fifth year of His Majesty King Edward the Seventh, is hereby amended by inserting the words "other than Dominion Lands" immediately after the word "lands" in the first line thereof.

2. Section 62 of the said Act is hereby amended by inserting the words "or Dominion Land Surveyors" immediately after the word "surveyors" in the seventeenth line thereof.

3. This Act shall come into force on the day it is assented to.

DEPARTMENT OF JUSTICE, OTTAWA, December 20th, 1905.

GEO. PATTERSON, Esq.,

Deputy Attorney General,
Winnipeg, Man.

Re Manitoba Land Surveyors' Act.

SIR,—Replying to your letter of the 15th inst., I beg to say that I have examined the draft of the proposed Act to amend "The Land Surveyors' Act" which you have sent me. I am of the opinion that it removes the objections taken to this Act in my report of November 10th last.

Yours truly,

C. FITZPATRICK.

WINNIPEG, CANADA, December 20th, 1905.

The Hon. the Minister of Justice,
Parliament Buildings,
Ottawa, Ont.

DEAR SIR,—The Attorney General of Manitoba has forwarded us a copy of your report on Chap. 60 passed at the last session of the Legislature of Manitoba, being an Act to incorporate the Manitoba Investment Agency Company. We are the solicitors for the company, and the matter was referred to us for attention. We have seen the Attorney General and arranged with him to procure an amendment at the next session, if the same is necessary. We, however, would respectfully request your reconsideration of this matter, as we submit that the Act has in no way trespassed upon the jurisdiction of the Dominion parliament.

We draw your attention to the fact that this company is a stock company, and the authority to do business outside the province was intentionally inserted, so that no question might arise between the shareholders and the directors for carrying on business outside the province. We venture to submit that it is not necessary in the incorporation of a company by a provincial legislature to state that its business is limited to the particular province; that it would be inexpedient to do so, and might prevent it in obtaining power to do business outside the province of incorporation. The express power to acquire property and do business outside the province is a matter which more particularly affects its shareholders, unless the Act provided for doing business outside of the province of Manitoba the point might be taken that the company had no such power, and that it could not obtain a license for foreign business, under any foreign corporation Act, as original Act did not provide for same. As a matter of fact, provincial companies, whether authorized or not to deal outside their

home jurisdiction, obtain licenses under the foreign corporation Act, and while the point we take has, we believe, never been determined upon, yet we submit that it is a perfect legitimate view to bear in mind when drafting a provincial Act, and one that does not necessarily invoke the powers of disallowance. If the company has powers which affect matters within the exclusive jurisdiction of the Dominion, or powers are inadvertently given, which would lead to a conflict of such jurisdiction; then of course the Act of Incorporation should be disallowed.

We have the authority of the Attorney General of Manitoba, to say that he does not see the necessity for the disallowance of this Act, or that it in any way infringes upon the jurisdiction of the Dominion Parliament.

We trust that you will be able to take this matter under your favourable consideration, and be able to reconsider your report. As we intimated, we of course will submit, and procure any amendment, that may be deemed necessary at the next session of the legislature. If on reconsideration you still think it is necessary to amend the Act, we shall be pleased to know exactly what words you wish struck out. We presume it is simply the words "or elsewhere" in the 3rd line of the 11th section.

Yours truly,

ROBINSON & HULL.

WINNIPEG, CANADA, December 20, 1905.

HON. C. FITZPATRICK,
Minister of Justice,
Ottawa, Ont.

Re Winnipeg Fire Assurance Company, Chapter 23, Statutes of Manitoba, 1905

DEAR SIR,—We inclose herewith a copy of a letter which we, as solicitors for the above company, received a few days ago from the Deputy Attorney General of the province of Manitoba, together with a copy of the report therein referred to.

We have been instructed by our clients to point out that the possible construction suggested in your report never occurred to the company and that they always understood that the charter obtained from the Legislature of the province of Manitoba merely authorized the company to do business within this province. In support of this may be pointed out the fact that the company, immediately upon the completion of their organization, took out a license in the then Northwest Territories, of Canada, without ever suggesting or claiming that the Manitoba charter conferred on the company any powers outside of Manitoba.

It seems to us that it would be utter folly for this company or any other, even were its charter to remain unchanged, to contend that the enactment of the Legislature of Manitoba would confer on the company any power to do business outside of the province of Manitoba. It seems to us, the company assuming to open up for business outside of the jurisdiction in which they were incorporated, would immediately run foul of the requirements of such other jurisdiction with regard to licensing of foreign corporations.

In short, while we admit that it would have been quite proper to expressly restrict the company's operations to the province of Manitoba, yet it seems to us that no person or corporation could be prejudiced by the charter remaining as it is.

A perusal of some of the more recent private Acts enacted by the Legislature of the province of Manitoba, discloses the fact that Acts identical with the one incorporating our company have been allowed to go unchallenged, and it does not appear that any person has in any way been prejudiced. In this connection we would refer you to the following:—

1. Occidental Fire Insurance Company Act, page 49, Manitoba Statutes of 1902, being chapter 65, 1 and 2 Edward VII., sec. 12.

2. Western Farmers' Live Stock Insurance Company, page 67, Statutes of 1900, being chapter 77, 63 and 64 Victoria.

3. Central Canada Fire Insurance Company, Statutes of 1898 at page 11, being chapter 54, of 61 Victoria, sec. 12.

4. Winnipeg General Trust Company, Statutes of 1898, page 68, being chapter 58 of 62-3 Victoria, sec. 20.

5. Manitoba Insurance Association, Statutes of 1889, on page 26, being 52-3 Victoria, sec. 3.

The writer feels quite positive that there are numerous other Acts similar to these, but the foregoing will be sufficient to indicate that there is practically uniformity in the wording of the Manitoba Statutes in this respect, and that the parties who drafted the Winnipeg Fire Ass. Company's charter were but following a well-beaten track.

Our clients have approached the Attorney General's Department here with a view of inducing the authorities to pass an amendment in order to meet your views, but they have intimated their unwillingness to do this without exacting the full limit of fees, and they appear unwilling to accept any responsibility for the Act being worded as it is in regard to the particular feature mentioned in your report. The result is that our clients, who are a new concern and struggling to do a legitimate business would, if the amendment is insisted upon, be put to very considerable expense and trouble.

We shall feel greatly obliged if you would be so kind as to look into this matter at the earliest possible moment and consider whether, in view of all the circumstances, you would not feel disposed to waive the point raised by you. It would, of course, be very proper to call the attention of the law department of the Manitoba Government to the advisability of expressly limiting to the province of Manitoba the powers granted to any company incorporated by the Manitoba Legislature, and we feel quite certain that the Attorney General's Department will be careful in the future to see that your views in this respect would be carried out.

We hope to receive a reply from you at an early date, and in any event to receive your assurance that our company's Act will not be disallowed. If it is impossible for you to waive your objections to the charter as it stands, our clients would certainly apply for an amendment at the ensuing session of our legislature, but we trust that this will not be necessary in view of our clients' position, which we trust we have indicated with sufficient clearness in the foregoing.

What we have written on behalf of the Winnipeg Fire Assurance Company applies equally to the Act incorporating the Assiniboine Fire Assurance Company.

Yours truly,

ROTHWELL & JOHNSON.

MESSRS. ROTHWELL & JOHNSON,
Barristers, &c.,
Winnipeg, Man.

WINNIPEG, December 1, 1905.

DEAR SIRS,—The Dominion Government has intimated to the Government of Manitoba that Chapter 73, being an Act to incorporate the Winnipeg Fire Assurance Company, will be disallowed unless amended at the next session of the legislature of this province, on the ground stated in the inclosed copy of the report thereon by the Minister of Justice.* Kindly ascertain at once whether the company will apply for

* Report of Minister of Justice of November 1, 1905. Ante p.
such amendment, so that the Government of Manitoba may be in a position to make a proper reply to the communication received from Ottawa.

I have the honour to be, gentlemen,

Your obedient servant,

GEORGE PATTERSON,

Deputy Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, January 3, 1905.

Messrs. ROBINSON & HULL,

Barristers,

P.O. Box 1276, Winnipeg, Man.

SIRS,—I am directed to acknowledge receipt of your letter of 20th instant with regard to Chapter 60 of the Acts of Manitoba, intituled, "An Act to incorporate 'The Manitoba Investment Agency, Limited,'" and I am to state that your argument has been fully considered, but the Minister entertains no doubt that in view of the powers incorporated under section 11 the Act is *ultra vires*, and that the complications which may ensue from allowing it to remain are so grave as to require the exercise of His Excellency's power of disallowance, unless indeed satisfactory assurance be furnished by the Lieutenant Governor that the Act will be amended at the next session of the legislature by striking out all the words which purport to authorize the company to do business outside of Manitoba, and limiting the exercise of the powers granted to the province.

It would, so far as I see at present, meet this requirement to strike out the words "or elsewhere" in the third line of section 11, and to strike out also the first line and substitute therefor the following: "The company shall have and may execute the following powers within the province of Manitoba."

It is plain that a provincial legislature can only incorporate a company for provincial objects, and it has been held by the highest authority that the Dominion alone can incorporate a company to do business throughout the Dominion, or in more provinces than one. I do not admit that a company incorporated by a province within the limits of its jurisdiction has authority to carry on its business in another province, even if licensed by that other province so to do. That is no doubt a debatable question, but, however it may turn, it is certain that such a company can have no greater capacity by reason of power admitted to be conferred *ultra vires* of its constituting authority.

The Minister regrets, therefore, that he could not under any circumstances advise His Excellency to advise this Act to stand unless properly amended.

I observe that action is becoming somewhat urgent since the time for disallowance will expire on 9th proximo.

I have the honour to be, sirs,

Your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

DEPARTMENT OF JUSTICE, OTTAWA, 10th January, 1906.

*Re Winnipeg Fire Assurance Company and the Assiniboine Fire Assurance Company,
Manitoba Statutes, 1905*

Messrs. ROTHWELL & JOHNSTON, Barristers,

Winnipeg, Man.

SIRS,—Referring to your letter of 20th instant, and your telegram of this date, the minister will not, I think, in view of all the circumstances, insist upon the disallowance or amendment of these particular Acts, but I think perhaps this is the last time when he would be disposed to refrain from such a recommendation. The fact is that the Acts which you quote as precedents, or many of them, were not allowed to go, as you say, unchallenged, but the attention of the Provincial Government was called to these Acts as not containing proper limiting words, and with the recommendation that they should be amended. I am not satisfied that a provincial

company has authority even under license from another province to carry on its business there, and I think that all the companies intending to do business outside of the province should obtain Dominion authority therefor. If this is necessary, then it is obvious that the present practice of incorporating companies provincially, which by virtue of extra-provincial licenses, or otherwise, do business beyond the limits of the province incorporating them, it is very injudicious and likely some day to lead to a good deal of confusion and hardship. In future, therefore, I am under the impression that this government would not allow such Acts to remain. However, inasmuch as that position has not perhaps been laid down with sufficient precision to the local authorities, it may be not improper to allow these two Acts to stand as former ones to which you refer have stood.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor, 12 January, 1906

GOVERNMENT HOUSE, WINNIPEG, January 9, 1906.

The Honourable,
The Provincial Secretary,
Winnipeg.

SIR,—I have the honour to acknowledge receipt of a communication from His Honour the Lieutenant Governor forwarding copy of a letter from the Under Secretary of State at Ottawa, dated December 30, 1905, relating to chapters 54, 60 and 73 of the Statutes of Manitoba, 1905, and I beg to say that the different companies incorporated by those Acts were notified of the intention of the Dominion Government to disallow the Acts unless the amendments indicated in the former reports of the Minister of Justice be made. The Government of Manitoba takes the position that it is for the companies themselves to apply for the necessary amendments if they wish to avoid the penalty of disallowance, as the Acts are private Acts, which should be petitioned for by the parties interested. Further correspondence has been had with these companies, with the result that I have from the solicitors of the Winnipeg Fire Assurance Company, incorporated by chapter 73, and of the Manitoba Investment Agency, Limited, incorporated by chapter 60, written assurance that those companies will petition the legislature at the next session for the necessary amendments, provided they are unsuccessful in persuading the Minister of Justice that the Acts should not be disallowed. The solicitors for the other company, the Assiniboine Fire Insurance Company, incorporated by chapter 54 referred to, have stated the same thing, but have not written any letter undertaking to apply for the necessary amendments.

I might add that in the event of the companies applying for the necessary amendments to save disallowance, the government will facilitate the passage of same as much as possible.

I have the honour to be, sir,

Your obedient servant,

COLIN H. CAMPBELL,
Attorney General.

WINNIPEG, January 18, 1906.

The Hon. Deputy Minister of Justice,
Ottawa, Ont.

DEAR SIR,—*Re* Winnipeg Fire Assurance Company, and Assiniboine Fire Assurance Company, Statutes of Manitoba, 1905.

We are obliged for your favour of the 10th instant, and can assure you that the reasonable attitude taken by you in connection with our clients is much appreciated by them. We note the remarks contained in your letter with reference to the powers of provincial companies, and are seriously impressed with the importance of the points raised by you. The situation is in our opinion a very critical one, more especially in view of the opinions entertained by the present Attorney General in this province, and his apparent intention to precipitate a contest on the point in question between the federal and provincial authorities.

Yours truly,

ROTHWELL & JOHNSON.

WINNIPEG, CANADA, January 29, 1906.

Deputy Minister of Justice,
Ottawa, Ont.

Re "Manitoba Investment Agency," Chap. 60.

DEAR SIR,—We beg to express our regret for the clerical mistakes in this matter. We wrote the inclosed copy letter on the 8th instant, and by mistake it was addressed to "The Deputy Minister of the Interior." The writer, not having received an answer directed the telegram of the 16th to be sent, thinking that the letter had been addressed to your department. He was informed that the letter had not been posted, and concluded that some mistake had happened in the rush of letters with the office-boy, and sent the inclosed copy telegram of the 17th inst., and unfortunately it was again sent to the Minister of the Interior.

In the telegram of the 17th, the amendment proposed was to the same effect as in the letter of the 8th, but made shorter for the purpose of the telegram.

We very much regret the extra trouble you have been given in the matter. Would you kindly telegraph us as soon as possible after the receipt of this letter, if either amendments in our letter of the 8th or telegram of the 17th is satisfactory to you? We understand that you have had a good deal of correspondence with Rothwell & Johnston, barristers, of this city, relative to the Winnipeg Fire Insurance Company and the Assiniboine Fire Insurance Company, in which you made the point that it should be especially provided that the business of the company should be confined to the Province of Manitoba, but afterwards consented to allow the Acts to stand without this special limitation.

We trust, therefore, that you can see your way clear to agree to either of the amendments we propose, as they will be in accordance with the similar consent which you gave in regard to the two fire insurance companies.

We may add that we have presented our petition for amendment here, and the same has been introduced and will be passed by the Committee on Standing Orders on Tuesday.

We remain, yours very truly,

ROBINSON & HULL.

(Copy Letter)

WINNIPEG, January 8, 1906.

Deputy Minister of the Interior,
Ottawa, Ont.

Re "Manitoba Investment Agency," Chap. 60, Act of Manitoba.

DEAR SIR,—We beg to thank you for yours of the 3rd inst. We have undertaken with the Attorney General here to amend this Act, if required by the Minister of Justice, and we beg to confirm the undertaking that we gave in our letter of the 20th ult. to the Minister of Justice to the same effect.

With all due deference, we are unable to wholly agree with the third paragraph of your letter, at the same time, we feel that no good purpose would be served by presuming to enter into a discussion on the subject. We, however, wish there should be no words in the Act which restrict its operations to the Province of Manitoba, and, therefore, we suggest that there should be the following amendments to section II, viz.: "The company shall have, and may execute the following powers, viz.: To acquire and hold any lands and real and personal property of every description," and that these words be substituted for the first and second lines in section II, and the words "of every description in Manitoba or elsewhere," in the third line of the said section.

The objects of incorporation are of a provincial character, and we submit that the province can incorporate a company for provincial objects without it being necessary to state that these objects are to be exercised within the province.

We trust that what we propose will meet your objections to the Act. We wish in every way to comply with your ruling, at the same time we must ask you not to go out of your way to insist upon such an amendment as will interfere with the powers of the company for doing business elsewhere, leaving that question to be dealt with when they seek power to do business in other jurisdictions.

We remain, yours truly,

ROBINSON & HULL.

(Telegram.)

WINNIPEG, January 17, 1906.

Minister of the Interior,
Ottawa, Ont.

Letter eighth instant, inadvertently not mailed. Proposed strike out words "in Manitoba or elsewhere," third line, section eleven, and trust this will be satisfactory to you, especially as you gave similar consent in Winnipeg and Assiniboine Fire Insurance Companies. Please answer.

ROBINSON & HULL.

(Telegram.)

OTTAWA, January 26, 1906.

Messrs. ROBINSON & HULL,
Barristers,
Winnipeg, Man.

Referring to your letter of 20th instant, in the circumstances will accept amendment of sixteenth section, striking out words "in Manitoba or elsewhere," but must have undertaking immediately from local government to make this amendment, time for disallowance expiring ninth proximo.

E. L. NEWCOMBE

(Approved 3 February, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, January 26, 1906.

To His Excellency the Governor General in Council:

The undersigned referring to the following statutes of the Legislature of Manitoba, 1905, viz.:

Chapter 54, intituled: "An Act to incorporate 'The Assiniboine Fire Insurance Company'";

Chapter 60, intituled: "An Act to incorporate 'The Manitoba Investment Agency, Limited'", and

Chapter 73 intituled: "An Act to incorporate 'The Winnipeg Fire Assurance Company'", and

to the order of Your Excellency in Council of 23rd December last, has had under consideration the despatch of the Lieutenant Governor of Manitoba of 12th instant, transmitting letter of the Attorney General of Manitoba, who states that his government takes the position that it is for the companies themselves to apply for the necessary amendments, that further correspondence has been had with the companies, with the result that he has from the solicitors of the Winnipeg Fire Assurance Company, and the Manitoba Investment Agency, Limited, written assurance that these companies will petition the legislature at the next session for the necessary amendments if they are unsuccessful in persuading the undersigned that the Acts should not be disallowed. The Attorney General states also that the Assiniboine Fire Insurance Company has stated the same thing, but have not written any letter, undertaking to apply for the necessary amendment. He adds that in the event of the companies applying for the necessary amendment the government will facilitate the passage of the same as much as possible.

The Attorney General of Manitoba having apparently referred the solicitors of these companies to the undersigned in regard to the question of amendment or disallowance of these Acts, correspondence has been had. The solicitors of the Assiniboine Fire Insurance Company and the Winnipeg Fire Assurance Company state that these Acts were not intended to confer extra-provincial powers; that they were drafted in this respect in accordance with several other statutes of incorporation, which had been allowed to remain in force in Manitoba, and that inasmuch as they had no notice of any objection at the time of the passing of the Acts, it is a hardship upon them to require the Acts now to be amended, involving as it would in view of the attitude of the Government of Manitoba, payment of additional fees as for private legislation.

The undersigned is quite aware that in a number of cases provincial statutes incorporating companies have been allowed to remain in operation, and perhaps sometimes without comment, although the Acts confer powers in general terms without express words limiting the execution of these powers to the province. He is of opinion that in any such cases the courts must construe the Acts as not intended to confer powers beyond those which are competent to the legislature to grant, and although it is desirable in all such cases that there should be proper words of limitation in the Act, yet with regard to these two companies in the present circumstances, he does not think it necessary to insist upon amendment.

The case of the Manitoba Investment Agency, Limited, is still under consideration.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor, 31 January, 1906

The Honourable

The Provincial Secretary,
Winnipeg.

WINNIPEG, January 30, 1906.

SIR,—In further reference to the proposed disallowance of Chapter 60 of the Statutes of Manitoba for 1905, intituled: An Act to incorporate the Manitoba Investment Agency, Limited, a telegram from the Deputy Minister of Justice at Ottawa to Messrs. Robinson & Hull, solicitors of the company, has been shown to me, which states that the government at Ottawa will accept an amendment of section II. of the Act by striking out the words "in Manitoba or elsewhere" from the third line thereof, provided that an undertaking is immediately sent from the Government of Manitoba that this amendment will be made at the present session. I have therefore to request that you will inform His Honour the Lieutenant Governor that his government will undertake to have that amendment made at the present session, and ask His Honour to forward the undertaking to the proper quarter in Ottawa so that disallowance of the said Act may be avoided.

I have the honour to be, sir,

Your obedient servant,

COLIN H. CAMPBELL,
Attorney General.

(Approved 10 February, 1906)

DEPARTMENT OF JUSTICE, OTTAWA, February 3, 1906.

To His Excellency the Governor General in Council:

The undersigned, referring to his report to Your Excellency of 26th ultimo, has had under consideration the despatch of the Lieutenant Governor of Manitoba of 31st ultimo, inclosing copy of a letter from the Attorney General of Manitoba of 30th ultimo, stating that his government will undertake to have the Act of Manitoba, 1905, chapter 60, intituled "An Act to incorporate the Manitoba Investment Agency Company," amended at the present session of the legislature by striking out the words "in Manitoba or elsewhere" occurring in the third line of section eleven.

The undersigned, accepting this undertaking, is of the opinion that the Act may be left to such operation as it may have.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

The Honourable

The Minister of Justice,
Ottawa, Ont.

WINNIPEG, February 7, 1906.

SIR,—I herewith inclose copy of a Bill to amend the Act, chapter 60 of the Manitoba Statutes of 1905, being an Act to incorporate "The Manitoba Investment Agency Company, Limited." This Bill has passed its second reading and is approved of by the Private Bills Committee, but before giving it third and final reading, I am instructed to ask you if it meets with your approval as fulfilling the undertaking given by the government of the province to save the original Act from disallowance.

I have the honour to be, sir,

Your obedient servant,

GEORGE PATTERSON,
Deputy Attorney General.

No. . . .]

BILL

[1906

An Act to amend an Act to incorporate "The Manitoba Investment Agency, Limited."

Whereas "The Manitoba Investment Agency, Limited," was duly incorporated by An Act of the Legislature of the Province of Manitoba, being chapter 60, passed in the fourth and fifth years of His Majesty's reign, and intituled "An Act to incorporate The Manitoba Investment Agency, Limited," and whereas the company has, by its petition, prayed for certain amendments to its said Act of incorporation, and it is expedient to grant the prayer of the said petition,

Therefore His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

1. Section 11 of the said Act is hereby amended by striking out the words "in Manitoba or elsewhere" in the third line thereof.

2. Subject to the foregoing amendment nothing herein contained shall be deemed or construed as in any way taking away or impairing the rights or powers conferred on the said company.

3. This Act shall come into force the day it is assented to.

DEPARTMENT OF JUSTICE, OTTAWA, February 27, 1906.

GEORGE PATTERSON, Esq.,

Deputy Attorney General,
Winnipeg, Man.

SIR,—Referring to your letter of 23rd instant, I think the Bill, copy of which you inclose, is in accordance with the correspondence as to the amendment of the Act to incorporate the Manitoba Investment Agency, Limited.

I have the honour to be, sir,

Your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

5-6 EDWARD VII, 1906

(Approved 3 April, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, December 17, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of the province of Manitoba, passed in the fifth and sixth years of His Majesty's reign (1906), and received by the Secretary of State for Canada on April 17 last, and he is of opinion that these, except chapters 103 and 104, hereinafter mentioned, may be left to such operation as they may have, subject to the following comments:—

Chapter 102, intituled an Act to incorporate "The Brandon Fire Insurance Company, Limited."

This Act purports to authorize the company to carry on a general fire insurance business without any express limitation to provincial objects.

The undersigned considers that the Act should be amended so as to limit the business of the company to the province of Manitoba.

Chapter 103, intituled an Act to incorporate "The Brandon Trust Company, Limited."

The powers conferred upon the company are not expressly limited to provincial objects, and there are provisions contemplating that the company may do business beyond the limits of the province. Thus in section 7 the company is authorized to administer estates committed to it by any court in any of the provinces of Canada. By section 15 in the computation of liabilities, reference is to be made to the aggregate business of the company, and not merely to its business transacted in any one or more of the provinces. By section 22 the company may appoint or elect an advisory board in each of the provinces wherein the company may be licensed to transact business. By section 49 provision is made for service of process upon the company in any province.

In the opinion of the undersigned, this Act should be amended so as to limit the business of the company to the province of Manitoba, and the provisions referred to providing for business transacted beyond the province should be repealed as *ultra vires*.

Chapter 104, intituled An Act respecting "The Central Manitoba Trust Company."

This Act is subject to all the objections stated with regard to the last preceding chapter. The undersigned recommends that an inquiry be immediately addressed to the Lieutenant Governor of Manitoba to ascertain whether his government will undertake to have these two Acts amended as herein suggested within the time limited for disallowance.

Chapter 109, intituled An Act to incorporate "The Freehold Fire Insurance Company."

This Act purports to authorize the company to carry on a general fire, inland marine, inland transportation and plate glass insurance business, not, however, expressly limited to provincial objects.

The undersigned considers that the Act should be amended so as to confine the business of the company to the province of Manitoba, beyond which it cannot constitutionally extend.

Chapter 115, intituled An Act to incorporate the "National Plate Glass Insurance Company."

Power is conferred upon the company to carry on the business of plate glass insurance generally, with no express limitation to provincial objects.

Chapter 116, intituled An Act to amend Chapter 60 of 1-2 Edward VII, respecting the Northern Trusts Company.

By section 2 the objects and powers of the company are stated in general terms, and there is no limitation confining these to provincial limits.

Chapter 123, intituled An Act to amend the Act incorporating "The Guarantee Savings and Trust Company."

In this Act again, the objects and powers of the company are stated in general terms without express limitation.

Inasmuch as it is incompetent to the legislature to incorporate companies except for provincial purposes, or to confer powers in excess of those limited to provincial purposes, the undersigned recommends that the attention of the Lieutenant Governor be called to these Acts, chapters 109, 115, 116 and 123, with a view to the introduction of the proper amendments at the next sittings of the legislature.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his Government, and that he be asked to report as soon as possible as to what his Government proposes with regard to chapters 103 and 104, respecting the Brandon Trust Company, Limited, and the Central Manitoba Trust Company.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(Approved 1 May, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, April 17, 1907.

To His Excellency the Governor General in Council:

The undersigned, referring to the Order in Council of 3rd instant with respect to the Manitoba Statutes of 1906, has the honour to report that the Secretary of State has communicated with the Lieutenant Governor of Manitoba in accordance with the recommendations of the report of the undersigned, which was approved by the said Order in Council, and the Lieutenant Governor has replied under date of 16th instant, by telegram, as follows: "In reply to letter of fourth instant and telegram of fifteenth I am assured by my Government that with regard to chapter 104, the Central Manitoba Trust Company will apply for the necessary amendments at the next session of the legislature, as to chapter 103, the Brandon Trust Company will have to apply for the necessary amendments or the Act will be repealed."

In these circumstances the undersigned recommends that no further action be taken with regard to the said chapters 103 and 104.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

6-7 EDWARD VII, 1907

(Approved 14 October, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd October, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Manitoba, passed in the sixth and seventh years of His Majesty's reign (1907); received by the Secretary of State for Canada on 25th February, 1907, and he is of the opinion that these Acts may be left to such operation as they may have.

The undersigned observes that there are certain companies incorporated by these statutes in the execution of the power conferred upon a provincial legislature to incorporate companies with provincial objects, and that the business of some of these companies is not expressly by the Acts of incorporation limited to the Province of Manitoba. The statutes to which the undersigned refers are particularly Chapter 59, intituled "An Act to incorporate 'The Pioneers' Fire Insurance Company'";

Chapter 68, intituled "An Act to incorporate 'Western Canada Securities, Limited,'" and

Chapter 70, intituled "An Act to incorporate 'The Winnipeg Mercantile Trust Company'."

The latter Act provides by section 11, that it shall be lawful for the company to transact any loaning business whatever within the province, and to take and hold mortgages of real and personal estate, railway or municipal or other bonds of any kind whatsoever on the security of which money may be lent whether the said bonds form a charge on real estate within the province or not.

It is questionable, in the opinion of the undersigned, whether the loaning of money within the province upon real estate, or bonds charged upon real estate, situated outside of the province is one of those matters of a local or private nature within the province to which alone the legislative jurisdiction of the province extends.

In any case, however, this Act, as well as the other Acts mentioned, must be construed subject to the limitation of legislative power imposed by the British North American Act.

The undersigned does not consider that these are cases calling for the exercise of the power of disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

7-8 EDWARD VII, 1908

(Approved 14 November, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 17th September, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Manitoba, passed in the 7th and 8th years of His Majesty's reign (1908), and received by the Secretary of State for Canada on 9th March last, and he has the honour to report thereon as follows:—

Chapter 23, an Act to amend the Manitoba Insurance Act.

The attention of the undersigned has been specially drawn to sections 1 and 2 of this chapter, which are in amendment of the amending Act, Chapter 27 of 1904, and the effect of the said amending sections 1 and 2, of Chapter 23, construed in connection with the Act of 1904, is to render any person, firm or corporation liable to an action at the suit of the Provincial Treasurer for the amount of fifty per cent of the premium paid, in any case where such person, firm or corporation procures fire insurance, except through a special broker, on any property, real or personal, situate, or described as situate, in Manitoba, from any company not licensed or registered under the Manitoba Insurance Act.

The person, firm or corporation so insuring is in addition made liable on conviction to penalties.

The undersigned is asked to recommend the disallowance of this Act as *ultra vires* of the legislature upon the grounds hereinafter stated.

The Act seems plainly to refer to insurance contracts entered into outside of the Province of Manitoba, because an unlicensed or unregistered insurance company may not apparently do any insurance business in any circumstances within the province. In imposing a civil liability, as well as penalty in addition, in respect of the making of a contract outside of the Province of Manitoba, the local legislature is attempting to give its legislation an extra-provincial effect, which is of course *ultra vires* and incompetent.

Before making any recommendation upon the subject, however, the undersigned considers that inquiries should be made of the Government of Manitoba as to the reasons, if any, which are urged in support of the legislation, and as to whether these two sections would be repealed or suitably amended within the time limited for disallowance.

Chapter 57, intituled "An Act to provide for a Charter for the City of St. Boniface."

Some of the powers for the making of by-laws as stated in the 700th section of this Act appear in some respects to be in excess of the authority of the legislature to grant, especially as affecting the criminal law.

The undersigned considers, however, that any question which may arise as to the execution of any of these powers may conveniently be determined by the courts.

Chapter 77, intituled "An Act to incorporate 'The Western Canada Accident and Guarantee Insurance Company'".

The powers of this Company are not by any provision of the statute expressly limited to the province. General powers for the making of insurance contracts are conferred, and by the 13th section it is provided that the chief place of business of the Company shall be at the City of Winnipeg, or at such other place as the directors determine by by-law, and that the directors may establish branches, sub-boards or agencies either within Manitoba or elsewhere at such times and in such manner as they may deem expedient.

It seems intended by the Act therefore to authorize the Company to carry on the business of insurance outside of the Province of Manitoba. This in the opinion of the undersigned is incompetent to the legislature, and he considers that the Act should be amended by repealing the provisions empowering the directors to have their head office, or any agency of the Company, situate outside of the Province of Manitoba, and by providing further that the business of the Company is to be limited to the province.

Chapter 79, intituled "An Act to further amend Chapter 31 of 54 Victoria, intituled 'An Act to incorporate The Winnipeg Grain and Produce Exchange'".

The Winnipeg Grain and Produce Exchange petitioned the legislature against the passing of this Act. The petition is dated 13th February last, and a copy of the petition has been referred to the undersigned with a memorandum at the foot stating that so far as is known to the Exchange no consideration was given by the legislature to the petition.

The allegations of the petition relate entirely to the injustice or inexpediency of the proposed legislation. They do not seem to touch any question of *ultra vires* or question affecting the policy of Your Excellency's Government. It appears to the undersigned, therefore, that the remedy of the petitioners must lie with the local legislature, and that this is not a case for disallowance.

The undersigned recommends therefore that the said Acts other than Chapter 23, "An Act to amend the Manitoba Insurance Act," and Chapter 77, "An Act to incorporate The Western Canada Accident and Guarantee Insurance Company" be left to such operation as they may have.

As to the said Chapter 23, the undersigned recommends that the Lieutenant Governor of Manitoba be asked to state the reasons if any upon which His Government relies in support of sections 1 and 2, and as to whether these two sections will be repealed or suitably amended within the time limited for disallowance.

As to the said Chapter 77, the undersigned recommends that inquiry be made of the Lieutenant Governor as to whether amendments as above indicated will be made within the time limited for disallowance.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 31 December, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 19th December, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the despatch dated 7th instant, addressed by the Lieutenant Governor of Manitoba to the Secretary of State, transmitting copy of a letter of the Provincial Secretary of Manitoba, stating the views of the local Government with regard to Chapters 23 and 77 of the Statutes of Manitoba 1908, and he has the honour to report with regard to the said communication as follows:—

Chapter 23, intituled "An Act to amend the Manitoba Insurance Act."

It appears to the undersigned that the local Government has misapprehended the objections stated in the report of the undersigned of 17th September last. The undersigned stated with respect to this statute that "in imposing a civil liability as well as penalty in addition, in respect of the making of a contract outside of the Province of Manitoba, the local legislature is attempting to give its legislation an extra-provincial effect, which is of course *ultra vires* and incompetent."

The Provincial Secretary states that the Attorney General of Manitoba is of opinion that "so far as any criminal liability is concerned no person or corporation, not a resident of Manitoba, should be prosecuted for anything done or any contract made outside of the province for the recovery of any penalty in respect of the making of any contract, and that the statute should be amended if necessary to carry out that view. So far as civil liability is concerned, the Attorney General is of opinion that all residents of the Province, by taking out licenses under the Foreign Corporations Act, although their head office may not be in the Province, should be liable to civil suits of the nature provided by the legislation objected to, but he is willing to undertake, on behalf of the Government, that the legislation should be amended so as to make it clear that such civil liability is not intended to be further extended."

The objection stated by the undersigned has relation to the incompetency of a local legislature to attach a liability, either civil or criminal, to the doing of an act, or the making of a contract, outside the limits of the Province. This objection might be removed by an amending enactment to the effect that nothing in the amended Act should be construed to create any liability, either civil or criminal, in respect of any contract not made within the Province of Manitoba. The local Government simply offers, however, by the despatch in question, to propose an amendment exempting persons or corporations not resident within Manitoba from liability to criminal prosecution for anything done or any contract made outside of the Province. The Provincial Secretary adds certain observations as to civil liability, which the undersigned does not clearly comprehend, but they seem to have similarly in view some distinction as to such liability as between residents of the Province and non-residents.

In the view of the undersigned provincial legislation intended to impose a liability, either civil or criminal, in respect of the making of a contract beyond the limits of the Province is incompetent, whether such legislation be considered as affecting the residents of the Province, or non-residents.

The undersigned recommends, therefore, that a further despatch be sent to the Lieutenant Governor with the object of ascertaining whether upon further consideration his Government would undertake to have an amendment made at the next session of the legislature limiting by enactment, in the terms or to the effect above suggested, the application of the statute in question to contracts made within the Province.

Chapter 77, intituled "An Act to incorporate 'The Western Canada Accident and Guarantee Insurance Company.'"

The undersigned recommends that the Lieutenant Governor be informed that if his Government will undertake to have enacted at the next session of the legislature the amendments which as to this chapter the Provincial Secretary in the said despatch states that the Attorney General is willing to advise, the undersigned will be content to leave any further question which may arise to the determination of the courts, and will not deem it necessary to recommend to Your Excellency in Council any further action with regard to this statute.

The undersigned recommends that, if this report be approved, a communication be sent conformably to the Lieutenant Governor of Manitoba, with a request for an immediate reply.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Note:—The above reported Chapters 23 and 77 were accordingly amended by Chapters 24 and 105 respectively of the Acts of 1909.)

9 EDWARD VII, 1909

(Approved 19 October, 1909.)

DEPARTMENT OF JUSTICE, OTTAWA, 18th October, 1909.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Manitoba, passed in the ninth year of His Majesty's reign (1909) and received by the Secretary of State for Canada on 19th March, 1909, and he is of opinion that, subject to the comments hereinafter made, and, except in so far as hereby reserved for further consideration, these Acts may be left to such operation as they may have.

The undersigned submits the following special observations:—

Chapter 10, intituled "An Act respecting the licensing of extra provincial corporations."

By this Act corporations incorporated by Act of the Parliament of Canada and authorized to carry on business within Manitoba are classified as extra provincial corporations and prohibited from carrying on business within Manitoba except by license obtained under the provisions of the Act.

The undersigned does not admit that a local legislature has the power to so prohibit a Dominion Corporation from carrying on business authorized by its incorporating Act. Since however it is provided that such corporations upon complying with the provisions of the Act and regulations made thereunder shall be entitled to receive a license to carry on their business and exercise their powers in Manitoba, and since any question which may be raised touching the authority of the legislature to impose a license as conditional to the carrying on of such business may be conveniently determined by the Courts, the undersigned does not recommend disallowance.*

Chapter 22, intituled "An Act respecting the protection of game."

The undersigned considers that some of the provisions of this Act are *ultra vires* as relating to the criminal law, but he does not on that account recommend disallowance, the Courts having jurisdiction to declare the invalidity of these provisions when the question is raised.

Chapter 69, intituled "An Act to amend 'The Succession Duties Act'".

This Act has already been the subject of some correspondence with the local government. A despatch was received by Your Excellency from the Rt. Hon. the

* See final disposition of this question by the Privy Council in the case of Great West Saddlery Co. v. The King, 58 D.L.R. 1 (1921).

principal Secretary of State for the Colonies, copy of which was subsequently transmitted to the Lt. Governor of Manitoba as directed by order of Your Excellency in Council of 23rd April last, and, in a despatch from the Lt. Governor of Manitoba to the Secretary of State of 2nd July, the Lt. Governor states that he is in receipt of a letter from his provincial secretary informing him that the matter will be taken up at the next session of the Legislative Assembly of Manitoba. This assurance, however, scarcely goes far enough. The objection is that paragraph (f) of section 1 and section 2 of the said Act are *ultra vires* as purporting to authorize the taxation of property not situate within the province of Manitoba.

The undersigned considers that the local government should undertake not only that the matter will be taken up, but that these provisions will be repealed at the next session of the legislature, unless indeed the local government can state adequate reasons for supposing that the power to enact these provisions rests with the legislature under the British North America Acts. Unless one of these alternatives is satisfied the undersigned would be disposed to recommend the disallowance of this statute and he recommends that the Lt. Governor be asked for an early reply.

Chapter 89, intituled "An Act respecting the 'Grain Growers' Grain Company, Limited'".

This is an amending Act purporting to enlarge the powers of the Company. Section 2 is as follows:—

"2. The said Company, in addition to the powers it now possesses by law and under its charter of incorporation, is hereby empowered to invest in or to advance and lend money on real, personal and mixed securities, on cash, credit or other accounts, on policies, bonds, debentures, bills of exchange, promissory notes, or other obligations on the deposit of elevator and warehouse receipts and other documents of title to goods, wares and merchandise, bills of lading, certificates and other warranty of title; to lend money on the security of existing produce; to act as agents and brokers for the sale and purchase of any produce, stock, shares, or securities; to carry on business as traders, brokers, and commission merchants, and to carry on a general printing and publishing business."

It is objected on behalf of the Canadian Bankers Association that the powers so conferred or some of them are in excess of provincial authority as relating to the subject of banking. It is pointed out that provisions have been made by the Bank Act relating to the lending of money by the Banks upon the security of warehouse receipts and other documents of title to personalty; and that the powers now purporting to be conferred upon the Grain Growers' Grain Company, Limited, would apparently enable it to compete with the Banks in the business of lending money, although exempt from the regulations of the Bank Act.

Something doubtless depends in the construction of these powers, upon the existing powers granted to the company under the Manitoba Joint Stock Companies' Act in pursuance of which the company is recited to have been incorporated.

It seems impossible to formulate a comprehensive definition of banking powers which would not include the lending of money upon personal securities such as those mentioned in this section.

The undersigned therefore recommends that the Lt. Governor be requested to furnish copy of the company's existing powers as granted under the said Manitoba Joint Stock Companies' Act, and to state the grounds, if any, upon which it is supposed that section 2 may be competently enacted by a local legislature, and he recommends that further consideration of this Act be in the meantime deferred.

Chapter 91, intituled "An Act respecting the 'Manitoba Great Northern Railway Company'".

Chapter 92, intituled "An Act to amend 'An Act respecting the Midland Railway Company of Manitoba'".

The two statutes last mentioned affect a railway extending from points on the international boundary.

The undersigned while not recommending the disallowance of either of these statutes reiterates the doubt which has been frequently expressed by the Ministers of Justice that railways extending to the international boundary are within the jurisdiction of the local legislatures.

Chapter 103, intituled "An Act respecting 'The Standard Loan Company'".

The main purpose of this Act is to confirm an agreement between the Acme Loan and Savings Company and the Standard Loan Company and to vest in the Standard Loan Company all the property of the Acme Loan and Savings Company. It is recited that each of these companies was incorporated by the legislature of Ontario. They are therefore provincial corporations of Ontario, and it is consequently, in the view of the undersigned, incompetent to the legislature of Manitoba to enlarge or affect the powers or capacities of either of these companies. Similar objections, have, however, arisen in the past as to the legislation of other provinces, and following the course pursued in those cases the undersigned considers that the validity of this Act may be left to be determined by the courts rather than that the power of disallowance should in the circumstances be invoked.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba for the information of his Government, and that he be asked to expedite a reply in respect of the said chapters 69 and 89 which are to be the subject of further consideration.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

From the Secretary of State for the Colonies to the Governor General:

DOWNING STREET, 20th March, 1909.

My LORD,—I have the honour to request that your Excellency will inform your Ministers that I have had under my consideration the Bill introduced into the Legislative Assembly of Manitoba, entitled "An Act to Amend the Succession Duties Act."

2. My attention has been called to section 4 of chapter 45 of 4 and 5 Edward VII, under which I observe that Succession Duties are levied in respect of all personal property outside the Province in the case of persons domiciled in the Province at the time of death.

3. I also observe by the Bill in question that Succession Duties are to be levied on shares in companies possessed of property in Manitoba, even though the shares may not in law be locally situated in Manitoba.

4. As your Ministers are aware from my despatch No. 516 of the 25th of August last, it has been decided by the Judicial Committee of the Privy Council that the power of Provincial Legislatures with regard to taxation of this kind, is strictly limited to taxation on property locally situated within the province, and I would suggest that the attention of the Government of Manitoba should be invited to this decision of the Privy Council, with a view to their considering whether the law of the province should not be amended so as to bring it into accord with that judgment.

5. At the same time my attention has been called to the fact that the state of affairs which prevailed at the time when the Order in Council of the 26th of October, 1896, was passed, applying section 20 of the Finance Act, 1894, to Manitoba, has been altered by the Provincial legislation of 1905, and that therefore it is necessary to consider whether the Order in Council should not be revoked. I observe, however, that the present Bill proposes to adopt the principles laid down in that section of the Finance Act, 1894, and if this is actually carried out, it will not be necessary to revoke the Order in Council in question.

6. I trust that the Government of the Province will persist in their intention of re-adopting these principles as it appears to me desirable that they should be maintained throughout the Empire.

I have the honour to be,

My Lord,

Your Lordship's most obedient humble servant

CREWE.

Governor General His Excellency

The Right Honourable EARL GREY, G.C.M.G., G.C.V.O., &c., &c., &c.

(Approved 22 November, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, 17th November, 1909.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a despatch from the Lieutenant Governor of Manitoba to the Secretary of State, dated 12th instant, transmitting copy of a letter from the Provincial Secretary of Manitoba, in reply to the report of the undersigned approved by Your Excellency on the 19th of October last, upon Chapters 69 and 89 of the Manitoba Statutes, 1909.

With regard to the said Chapter 69, intituled "An Act to amend 'The Succession Duties Act,'" the Provincial Secretary states that the local Government will at the next session repeal paragraph (f) of section 1, and section 2 of the said Act, which statement the undersigned construes as an undertaking on behalf of the Government to promote and see to the passing through the legislature of the necessary legislation to effect such repeal. The Provincial Secretary adds that the point which the Government desires to cover and the taxation which it desires to make is believed to be justified, and that the law department will consider how the same should be accomplished in another direction, but he repeats the assurance that at the next session of the legislature the said provision objected to by the undersigned will be repealed.

This assurance the undersigned considers may be accepted as satisfactory, and he recommends that a despatch be sent to the Right Honourable the Principal Secretary of State for the Colonies in reply to his despatch of 20th March last informing him of the correspondence which has taken place thereupon with the Government of Manitoba, and of the assurance which Your Excellency's Government has received that the aforesaid provision will be repealed at the next session of the legislature.

As to Chapter 89, intituled "An Act respecting the 'Grain Growers' Grain Company, Limited,'" the Provincial Secretary states in effect that the local Government cannot admit that in so enlarging the powers of the Grain Growers' Grain Company the legislature has in any sense gone beyond its jurisdiction, and that the Government claims that the said Act is clearly within the competency of the legislature.

This statement, while it expresses clearly enough the view of the Local Government as to the power of the legislature to enact the amending Act, does not supply the information asked for by the undersigned in his said report.

The undersigned stated certain objections to the validity of the statute, and that in the construction of the powers in question something would depend upon the existing powers granted to the Company under the Manitoba Joint Stock Companies Act, in pursuance of which the Company is recited to have been incorporated, and he recommended that the Lieutenant Governor be requested to furnish a copy of the Company's existing powers as granted under the Manitoba Joint Stock Companies

Act, and to state the grounds, if any, upon which it was supposed that section 2 might be competently enacted by a local legislature.

The Lieutenant Governor has not complied with this request; he has neither furnished an extract from the Company's charter showing its original powers, nor stated any grounds in support of the legislation. It is necessary at least to have the former in order to determine properly the application of the Canadian Bankers' Association for disallowance, and the undersigned recommends that the Lieutenant Governor be requested to furnish the said information immediately.

The undersigned, further recommends that a copy of this report, if approved, be sent to the Lieutenant Governor of Manitoba for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

10 EDWARD VII, 1910

(Approved 11 January, 1911)

DEPARTMENT OF JUSTICE, OTTAWA, 7th December, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Manitoba, passed in the Tenth year of His late Majesty's reign (1910), and received by the Secretary of State for Canada on 9th April last; and he is of opinion that these statutes may be left to such operation as they may have, except as follows:—

Chapter 82, intituled "An Act to Incorporate 'The Accident Insurance Company of Manitoba, Limited'".

This company is authorized to carry on a general accident and guarantee insurance business. The Act contains no limitation as to locality within which the powers may be exercised. Section 13 fixes the chief place of business of the company at Winnipeg, but provides that the directors may establish branches, subboards, or agencies, either within Manitoba or elsewhere, at such times and in such manner as they deem expedient.

Chapter 102, intituled "An Act to incorporate 'The Manitoba Deep-Drilling Company'".

Section 2 provides that the head office of the company shall be at the City of Winnipeg, but shareholders' or directors' meetings may be held at such places, either within or without the Province of Manitoba, as may be decided upon by the by-laws of the Company.

This Act does not, however, appear to contain any provision intended to authorize the company to carry on business beyond the limits of the province. The undersigned doubts the propriety of the enactment that shareholders' or directors' meetings of this local company may be held outside of the province, but he is not disposed on that account to recommend the disallowance of the Act.

Chapter 107, intituled "An Act to Incorporate 'The Paris-Winnipeg Mortgage Company'".

Section 11 provides that the company "shall have power and authority to acquire, hold and own lands and real and personal property of every description in Manitoba or elsewhere, or any real estate or interest therein, by purchase, exchange or in any other manner, and to pay therefor by money or by giving in exchange therefor lands and real and personal property, fully or partially paid up stock in the

company, or the company's debentures, or partly by one and partly by others of the said methods; to promote immigration and colonize the lands of the said company and of others; to build upon, enter into party wall agreements, farm and improve the said lands, etc., etc." The section proceeds to confer upon the company with no limitation locally mortgage and investment powers, and the power to carry on the business of real estate agents, etc. These powers, in so far as they relate to the acquisition or holding of lands or the carrying on of business outside of the Province of Manitoba are, in the opinion of the undersigned, *ultra vires*.

Chapter 110, intituled "An Act to Incorporate 'The Rural Railway Company of Manitoba'".

Section 3 provides that the head office of the company shall be at the City of St. Boniface, but that shareholders' or directors' meetings may be held either within or outside the province of Manitoba, as may be decided upon by by-law of the Company.

This section corresponds with section 2 of Chapter 102, above referred to, and is subject to the same observation.

Chapter 116, intituled "An Act to Incorporate 'The Western Life Assurance Company of Canada'".

Sections 12 and 15 of this Act are as follows:—

"12. The head office of the company shall be in the city of Winnipeg in the Province of Manitoba, but branches or sub-boards or agencies may be established outside the province of Manitoba, pursuant to the powers which the company may acquire in foreign jurisdiction, in such manner as the directors may from time to time appoint; provided that no insurance shall be effected in provinces other than the Province of Manitoba, until an office or domicile is opened in some place therein and a local agent or manager is there appointed."

"15. The company may invest or deposit such portion of its funds in foreign securities as may be necessary in the establishment or maintenance of any foreign branch."

The powers conferred upon the company are to effect contracts of life insurance and to grant, sell or purchase annuities, grant endowments and generally carry on the business of life insurance in all its branches and forms. The company is described as the Western Life Insurance Company of Canada. The Act therefore evidently contemplates that the company may carry on a general business of life insurance throughout the Dominion.

As to the said Chapters 82, 107 and 116, which profess to authorize the companies thereby respectively incorporated to carry on business outside of the Province of Manitoba, the undersigned observes that the local powers of legislation in this respect are limited to the incorporation of companies with provincial objects, and for reasons which have been frequently stated, he is of opinion that these enactments purporting to confer extra-territorial powers cannot in the public interest be allowed to stand. The undersigned would, therefore, deem it his duty to recommend the disallowance of these statutes unless they be amended within the time limited for disallowance.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, and that the Lieutenant Governor be requested to inform Your Excellency's Government whether the said Chapters 82, 107 and 116 will be amended within the time limited for disallowance by repealing the said provisions which are intended to confer extra provincial powers, and moreover as to the said Chapter 116 by striking out the words "of Canada" in the name or title of the Company thereby incorporated.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(Approved 20 February, 1911)

MANITOBA LEGISLATION, 1910

OTTAWA, 30th January, 1911.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a despatch from the Lieutenant Governor of Manitoba, dated 25th instant, transmitting a letter of the Deputy Attorney General of Manitoba, with respect to Chapters 82, 107, and 116 of the Acts of Manitoba, 1910.

The Deputy Attorney General states that the Government of the Province will notify the companies incorporated by these Acts that unless they apply for amending Acts at the next session the Acts of incorporation will be disallowed, and he adds that if the companies do introduce such bills the Government will facilitate their passage in every way so as to remove the objections pointed out in the report of the Minister of Justice.

The undersigned observes that the time for disallowance will expire on 8th April next. He assumes that a session of the legislature will be held in the meantime, and he recommends that the Lieutenant Governor be asked to inform Your Excellency's Government in due time whether the necessary amendments have been enacted.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 6 April, 1911)

DEPARTMENT OF JUSTICE, OTTAWA, 4th April, 1911.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 7th December last, approved by Your Excellency on 11th January last in regard to the Statutes of Manitoba passed in the year 1910, has the honour to report that he has ascertained upon inquiry that Chapter 82, intituled "An Act to incorporate 'The Accident Insurance Company of Manitoba, Limited' ", has not been amended by the legislature, and inasmuch as the year limited for disallowance of the said Act will expire on 8th instant, the undersigned recommends that the said Act be disallowed for the reasons stated in the said report.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(The Statute was accordingly disallowed on the sixth day of April, 1911.)

1 GEORGE V, 1911

(Approved 12 February 1912)

DEPARTMENT OF JUSTICE, OTTAWA, 6th February, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Manitoba, passed in the first year of His Majesty's reign (1911), and received by the Secretary of State for Canada on 11th April last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 60, intituled "An Act to amend 'The Succession Duties Act'".

By section 4 of this Act a new subsection is substituted for subsection 2 of section 5 of the Manitoba Succession Duties Act. Paragraph (a) of the said subsection provides the respective rates of taxation to be levied according to the value of the estates. Paragraph (b) is a remarkable enactment, reading as follows:—

"In case the deceased left property outside of Manitoba which, if it had been situated therein, would have been liable to succession duties under this Act, it shall be the duty of the Provincial Treasurer to ascertain and determine the aggregate value of the estate as defined by this Act, and the total amount of what would be the dutiable value of the whole estate if it had all been situate in Manitoba; and the percentages of duty payable upon that portion of the estate situate in Manitoba shall be the same as if all the property had been situated in Manitoba; for example, if A's estate consists of \$100,000 dutiable value in Manitoba and \$400,000 dutiable value elsewhere, the percentage of duty chargeable on the \$100,000 shall, in the case of a beneficiary being a near relative, be seven instead of two."

The undersigned is not satisfied that this provision can be strictly justified as taxation within the province, but he leaves the question for the determination of the courts when it arises.

Chapter 78, intituled "An Act to amend 'An Act to incorporate the Brandon Fire Insurance Company, Limited'".

By this statute the name of the Brandon Trust Company, Limited, is changed to "Canadian Guaranty Trust Company," and the powers of the company are enlarged by enabling it "to receive money on deposit, for investment or otherwise."

The power to receive money on deposit otherwise than for investment seems to be appropriate to a banking company rather than to a trust company, and the undersigned entertains doubt as to whether the local legislature can confer such a power. Moreover the use of the word "Canadian" in connection with the name of the company indicates or implies general as distinguished from local powers or origin. The undersigned considers that such words as *Canada*, *Canadian* or *Dominion* ought not to be used by the local legislatures to describe corporations of their own constitution.

The undersigned does not, however, recommend the disallowance of this Act, either on account of the nature of the powers conferred, seeing that the courts may conveniently determine the objection should it arise, or on account of the name conferred, seeing that there are some precedents of similar titles which have been allowed to remain. The undersigned observes, however, that the appropriation of these names by the provincial legislatures will be further considered should occasion require, and may be held to afford adequate reasons for disallowance.

The undersigned has the honour to recommend that copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

2 GEORGE V, 1912*(Approved 2 January, 1913.)*

DEPARTMENT OF JUSTICE, OTTAWA, 19th December, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Manitoba, passed in the second year of His Majesty's reign (1912), received by the Secretary of State for Canada on 2nd May last, and he is of opinion that these statutes may be left to such operation as they may have, except as herein-after otherwise recommended:—

Chapter 30 intituled "An Act to amend the Manitoba Insurance Act."

By one of the provisions of this Act foreign insurance companies which under the definition include companies incorporated by the Parliament of Canada not having their head offices within the province, are forbidden to transact business within the province until they have appointed the Inspector of Insurance to be their attorney, and the power of attorney is required to contain certain specified provisions.

This provision appears to the undersigned to be in excess of the authority of the legislature, but it is perhaps a harmless sort of requirement which might be disregarded subject to the view of the courts.

Chapter 57, intituled "An Act respecting Offensive Weapons."

This Act seems to relate to the criminal law, but it is unobjectionable in substance, and may be left to its operation if or in so far as it is within the local legislative powers.

Chapter 75, intituled "An Act to regulate the Sale of Shares, Bonds or other Securities of Foreign Companies."

By this Act it is declared unlawful for any company not incorporated under the authority of the legislature of the province, or licensed or authorized as provided by the Act to sell or offer or attempt to sell in the province any shares, stocks, bonds or other securities of the company without first obtaining a certificate from the Provincial Public Utility Commission. Moreover, foreign companies, which are defined to include companies not organized or incorporated or authorized by local legislation, are required to file statements of their business.

Section 14 reads as follows:—

"Whenever it shall appear to the Commissioner that the assets of any such foreign company doing any of such business in this Province are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable or unauthorized manner, or is jeopardizing the interest of its stockholders or investors in shares, stocks, bonds or other securities by it offered for sale, or whenever any such company shall fail or refuse to file any papers, statements or documents required by this Act, without giving satisfactory reasons therefor, said Commissioner shall at once communicate such facts to the Attorney General, who may thereupon apply to the Court of King's Bench, or a judge of said court, for the appointment of a receiver to take charge of and wind up the business of such company, and if such fact or facts be made to appear it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as to the said court or judge may seem meet:"

These and other provisions of this Act in their relation to companies incorporated by the Parliament of Canada, appear to the undersigned to be of very doubtful validity. They profess to limit the execution of powers competently conferred by Parliament, and to authorize the winding-up of companies for insolvency.

It would seem that the legislature itself entertains doubt of its enacting authority, because by section 17 it is provided that if the courts should declare any provision of the Act *ultra vires* the decision shall only affect the particular section or provision so declared and shall not affect any other part of the Act. Any question arising with regard to this statute may, however, be conveniently determined by the courts, and the undersigned does not consider it necessary to recommend disallowance.

Chapter 118, intituled "An Act to amend 'An Act to incorporate the Imperial Canadian Trust Company'".

The Imperial Canadian Trust Company was incorporated by Chapter 87 of the Manitoba Acts of 1911, and by section 43 it was provided that the Company should have its head office at the city of Winnipeg and might establish agencies elsewhere in the province. By section 6 of the present Act the said section 43 is repealed, and the following substituted therefor:—

"43. The head office of the Company shall be in the City of Winnipeg, in the Province of Manitoba, but branches or local boards or agencies may be established elsewhere within or without the said Province, in such manner as the directors may from time to time determine."

This substituted provision is, according to the view which has been held and frequently stated by the predecessors in office of the undersigned, *ultra vires* of the legislature in so far as it authorizes the Company to establish local boards and agencies outside of the Province of Manitoba.

The undersigned, concurring in this view, and following the uniform practice heretofore pursued in such cases, would feel it his duty to recommend the disallowance of this statute unless the said section 6 be repealed or amended so as not to confer extra-provincial powers.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Manitoba, for the information of his Government, and that he be asked to report whether the said section 6 of Chapter 118 will be repealed or amended as herein suggested within the time limited for disallowance.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

(Note:—Section 43 of Chapter 118 was amended by Chapter 108 of 1913 in accordance with the requirements of the above report.)

3 GEORGE V, 1913

(Approved 10 November, 1913)

DEPARTMENT OF JUSTICE, OTTAWA, 30th October, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Manitoba, passed in the third year of His Majesty's reign, 1913, and received by the Secretary of State for Canada on 29th March last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments and except as hereinafter recommended.

Chapter 19, intituled "An Act to prevent the employment of Female Labour in certain capacities."

It is provided by this Act that no person shall employ in any capacity any white woman or girl, or permit any white woman or girl to reside or lodge in, or to work

in, or, save as a bona fide customer in a public apartment thereof only, to frequent any restaurant, laundry or other place of business or amusement owned, kept or managed by any Japanese, Chinaman or other Oriental person; and employees who contravene this provision are made liable to a penalty.

There has been referred to the undersigned copy of a despatch from the Secretary of State for the Colonies referring to similar legislation of the Province of Saskatchewan, Chapter 17 of 1912, which was subsequently amended by the legislature upon representations of Your Royal Highness's Government by striking out the words "Japanese or other Oriental person." Exception had been taken to the Saskatchewan Act by the Secretary of State for Foreign Affairs and the Secretary of State for India. It was pointed out by Sir Edward Grey that the Japanese Government had the strongest objection to Acts differentially affecting Japanese subjects, and by the Marquess of Crewe that the Government of India and popular opinion in India resented strongly any action inflicting disabilities on British Indian subjects, who were clearly covered by the term "Oriental" as used in the Act. Mr. Harcourt observes that he presumes that steps will be taken in like manner to secure the amendment of the Manitoba statute, which he observes is not to come into force until proclaimed by the Lieutenant Governor in Council.

It is provided by the third section of this Act that the Act shall come into force upon proclamation of the Lieutenant Governor in Council, and the Lieutenant Governor reports that it is not the intention of his Government to bring this Act into force in its present form, and that "if it is decided to introduce legislation to amend the statute, it will take the form of that passed by the Saskatchewan Government, and will not refer to any people by name."

The Acting Under-Secretary of State for External Affairs advises that the Lieutenant Governor's letter is being communicated to the Secretary of State for the Colonies.

Chapter 102, intituled "An Act respecting 'The Dominion Trust Company.'"

It is recited that this Company was incorporated by Chapter 89 of the statutes of the Dominion, 1912, by which the Company was authorized to acquire the stock and business of the Dominion Trust Company, Limited, incorporated by charter of the Province of British Columbia, and authorized and licensed to do business in the Province of Manitoba; that it is expedient that the transfer of the business, rights and property of the Dominion Trust Company, Limited, in the Province of Manitoba, to the new company should be ratified and confirmed by Act of the legislature, and it is accordingly provided that the transfer is authorized, ratified and confirmed. The Act proceeds, however, with a number of provisions relating to the powers and business of the new company which, it must be remembered, is a company constituted by the Parliament of Canada. This legislation may of course be harmless, so far as the powers enumerated correspond with those granted by Parliament, but the undersigned apprehends that it is incompetent to the legislature to enlarge or modify the constitution of the company. He observes, among other things, a provision to the effect that the company, if authorized by by-law, may borrow money upon the credit of the company, limit and increase the amount to be borrowed, and hypothecate, mortgage or pledge its property.

It appears to the undersigned that if these powers be not already possessed by the Company by virtue of its Dominion grant they cannot be conferred by the local legislature, and in matters affecting the powers of a company, especially the exercising of borrowing powers, it is undesirable that any doubt should exist. It is not doubted that the local legislature has authority to remove any impediment which may exist under its laws to the execution of the powers of the company, if any such impediment can exist notwithstanding the parliamentary grant, but in the opinion of the undersigned that is the extent to which the provincial legislature may enact enabling legislation.

The undersigned considers therefore that this statute should be amended by a declaration that nothing therein contained is to be construed to confer capacity upon the company which it does not possess by its constituting Act, or that all clauses be repealed which profess to enable the company to exercise within Manitoba powers not so conferred.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his Government, and that the Lieutenant Governor be requested to report as early as possible the intentions of his Government with regard to Chapter 102.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

(Note:—Chapter 102 was amended by Chapter 143 of 1914 repealing the sections objected to in the above report.)

4 GEORGE V, 1914

(Approved 24 September, 1914)

DEPARTMENT OF JUSTICE, OTTAWA, 22nd September, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Manitoba, passed in the third and fourth years of His Majesty's reign (1913-14), and received by the Secretary of State for Canada on the 11th March, 1914, and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

5 GEORGE V, 1915

(Approved 24 April, 1916)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 19th April, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the province of Manitoba, passed in the fifth year of His Majesty's reign, 1915, and received by the Secretary of State for Canada on 23rd April last, and he is of opinion that these Statutes may be left to such operation as they may have. Chapter 92, intituled "An Act respecting the Winnipeg and St. Boniface Harbour Commissioners," is, however, subject to special comment.

The Act recites a Statute of the Dominion, chapter 55 of 1912, intituled "An Act to incorporate the Winnipeg and St. Boniface Harbour Commissioners," and further recites that it is expedient that certain additional powers be conferred upon the cor-

poration. The Commissioners were incorporated by the said Dominion Statute with jurisdiction within the limits of the harbour of Winnipeg and St. Boniface, and with the powers, among others, to acquire, expropriate, hold, sell, lease and otherwise dispose of real estate, building and other property, within the harbour as may be necessary for its development, maintenance and protection; to administer the dock property and water lots, and to sell, alienate, mortgage or otherwise dispose of any land acquired from the Government of Canada, to regulate the control, use and development of the water front; to construct and maintain docks, channels, warehouses, etc.; to acquire, lease, maintain and operate railways; to enter into agreements with railway companies; to make arrangements for traffic; to operate plant and machinery for increasing the usefulness of the harbour; to make financial arrangements; to exercise borrowing powers; to make by-laws for a number of purposes as specified connected with the harbour, and to impose harbour dues.

The Manitoba Statute in question, after reciting, as has already been shown, that it is expedient that certain additional powers shall be granted to the corporation, purports to authorize and empower the corporation to make by-laws not inconsistent with the provisions of any statute of the Dominion, or of the province of Manitoba, for preventing and prohibiting the building, construction or placing of any erection of any kind upon any land adjacent to any river within the limits of the cities of Winnipeg or St. Boniface; to prevent the throwing of earth, stone, gravel, etc., in or upon the banks of any such river; to prevent and prohibit skating rinks or toboggan slides upon the ice; to regulate the building of any construction below high water mark which may be dangerous to or cause interference with navigation; to require proprietors adjacent to the shore to remove, destroy or cover up ashes, cinders, etc., and to impose penalties for the infringement of the provisions of any such by-law. These powers purporting so to be conferred by local authority are, in the opinion of the undersigned, *ultra vires* of the legislature as affecting navigation and shipping, and the constitution of a corporation created by the Dominion Parliament under its exclusive legislative powers. The absence of any authority in the local legislature to sanction these provisions is, in the opinion of the undersigned, not doubtful.

If the Harbour Commissioners of Winnipeg and St. Boniface do not already by virtue of their Dominion incorporation possess the powers which are attempted to be conferred by the local statute, it is no doubt open to the Parliament of Canada to enlarge the existing powers or grant the other powers which are the subject of the local legislation, but it is, in the view of the undersigned impossible to acquiesce in the view, upon which the statute in question appears to proceed, that these powers are the proper subject of local grant because they have not been granted by the Dominion. The undersigned would therefore recommend the disallowance of this statute were it not for the fact that its provisions seem incapable of doing any serious harm. Many of the powers which the provincial Act professes to confer would appear to have been already derived under the Dominion Statute, and as to those which are in excess the courts may, of course, readily determine any question of *ultra vires*. The undersigned would, however, recommend that this Act be repealed by the legislature at its next session.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

6 GEORGE V, 1916

(Approved 24 February 1917)

DEPARTMENT OF JUSTICE, OTTAWA, 20th February, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Manitoba, passed in the 6th year of His Majesty's reign (1916), and received by the Secretary of State for Canada on 8th April, 1916, and he is of opinion that these may be left to such operation as they may have, subject to the following observations:—

Chapter 59, intituled "An Act to enable Electors to initiate laws, and relating to the submission to the Electors of Acts of the Legislative Assembly."

This statute is of questionable validity, and the undersigned has heretofore had occasion to comment upon similar provisions enacted by one of the other Western Provinces. It is provided that the Act shall come into force on proclamation of the Lieutenant Governor in Council, but in the meantime its provisions are being considered by the Courts, and it is therefore unnecessary that the undersigned should make any further observations here.

Chapter 62, intituled "An Act to amend 'The Jury Act'".

This statute has been the subject of some correspondence with the local Government, and is considered in a separate report.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

(NOTE.—Chap. 59 *supra* was subsequently held by the Privy Council to be *ultra vires* of the Provincial Legislature, L.R. [1919] A.C. 935.)

(Approved 11 Dec., 1916).

9th December, 1916.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a statute of the legislature of Manitoba, passed at its last session, Chapter 62 of 1916, assented to on 10th March, and received by the Secretary of State for Canada on 8th April, entitled "An Act to amend the Jury Act", by the provisions of which a section, 46A, is added to the Jury Act of the province, Chapter 108 of the Revised Statutes 1913, providing as follows:—

"When either before or during any sitting of the Court of the King's Bench referred to in section 46 of this Act, it appears necessary or advisable for any reason to have a larger panel, the judge assigned to preside over such sitting, or any other judge of the Court of King's Bench, may in writing request the sheriff to summon any number of petit jurors in excess of the number provided by said section 46.

"(2) Thereupon, such additional petit jurors shall be chosen and summoned by the sheriff in the manner outlined in the said Act and all sections of the said Act shall *mutatis mutandis* apply to such additional jurors."

By the said Section 46 of Chapter 108 it is provided as follows:—

"There shall be eighteen grand jurors and thirty-six petit jurors summoned in the first instance for any sitting of the Court of King's Bench for the trial of causes, matters and issues which are to be tried with a jury and for the trial of criminal matters and proceedings.

"(2) The number of petit jurors to be summoned in the Eastern Judicial District for any such sitting shall be forty-eight."

It therefore appears that while formerly the number of petit jurors to the panel was limited to 36, or for the Eastern Judicial District to 48, the amending Act confers unlimited authority upon a judge of the King's Bench to authorize the sheriff to summon any number of petit jurors in excess of the number formerly prescribed.

The effect or propriety of this legislation is not questioned in its application to civil proceedings, these being within the exclusive authority of the local legislature. The undersigned directs attention to the amendment only because of the operation which it may have in regard to criminal trials. The subject of procedure in criminal matters is within the exclusive legislative jurisdiction of Parliament, and is specially withdrawn from provincial control. By the Criminal Code, section 921, it is provided that qualifications of petit jurors shall be those prescribed according to the laws of the provinces for the time being in force. There is no Dominion legislation expressly fixing the number of the panel, and it has, as the undersigned apprehends, been assumed for the purposes of the Criminal Code that its provisions relate to the panels as constituted by the respective legislatures for civil proceedings. It may be debatable whether this intention is by a strict interpretation to be found implied in the Criminal Code. It may also be questionable that such an intention, whether express or implied, can have effect consistently with the distribution of legislative authority under the British North America Act, 1867. It is not, however, necessary for present purposes to discuss or determine either of these questions.

It is provided by the Criminal Code that either party, prosecutor or accused shall have the right to challenge the array for the usual cause, and shall also have any number of challenges to the polls for cause; the prosecutor and the accused each have also a limited number of peremptory challenges to the polls; and it is moreover enacted, Section 933, that the Crown may direct any number of jurors not peremptorily challenged by the accused to stand by until all the jurors have been called who are available for the purpose of trying the indictment. It is manifest that this right of the Crown to cause any juror to stand aside until the panel has been exhausted affords to the prosecuting authority an advantage in selecting a jury which increases or appreciates in proportion to the number of the panel; and while the right, which is one of ancient origin and authority, is recognized by the Criminal Code, it is in the view of the undersigned only maintainable in reason with relation to a panel the number of which is so reasonably restricted as not to afford opportunity for abuse in the exercise of the power.

The undersigned considers that the limit of 48 which was previously fixed in the extreme case for the Province of Manitoba is adequate in the public interest, and ought not to be exceeded for the purposes of the exercise of the right to require a juror to stand by in a criminal case, and he apprehends that Parliament would have imposed a reasonable limit had it been suggested or considered that possibly a province might for its own purposes increase the number of the panel indefinitely.

Criminal trials are proceeding in the Province of Manitoba, the Parliament is not in session, and it will in the ordinary course of things be several months before a suitable amendment can be obtained to regulate, in a manner compatible with justice, the right of the prosecution to require jurors to stand by, having regard to the fact that by the local legislation in question provision is made for the summoning of an unlimited number of jurors in addition to the ordinary panel.

Presumably the local legislation was not intended to affect criminal procedure, but there is a question which can be determined only by the courts as to whether the local provision does not modify criminal procedure by the indirect method which has been described; and, as the matter is one affecting the liberty of the subject, the undersigned considers that it should not be permitted to remain in doubt, or left to the uncertainties of litigation, if these results may be reasonably avoided.

The Provincial Government is responsible for the administration of criminal justice in the province, and may therefore enunciate its intention in the application of the amendment in question. Your Excellency's Government is likewise responsible for its policy in the promotion of such amendments to the Criminal Code as will tend to avoid injustice in the application of its provisions to existing conditions. The undersigned, upon careful consideration of the situation introduced by the recent amendment to the local laws, deems it his duty to advise that the right of the prosecution to select jurors for criminal cases cannot, compatibly with the ends of justice, be enlarged in such a manner as might result from the application of section 46A to the project of securing a panel of petit jurors subject to the rule enunciated in Section 933 of the Criminal Code; and therefore for the avoidance of doubt and with a view to the application of the law in accordance with what he conceives to be its reasonable purpose, he would be disposed to consider the propriety of disallowance unless the Lieutenant Governor of Manitoba be advised to give an assurance that his Government will see that, pending the consideration by Parliament of the provisions of the Criminal Code to which the undersigned has referred, the prosecuting authority shall not exercise any right to require jurors to stand aside at criminal trials in excess of that which would have been permissible if section 46A as enacted by the recent Act of Manitoba had not been passed.

The undersigned accordingly recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Manitoba, for the information of his Government, with a request for an early answer to the inquiry herein suggested.

Humbly submitted,

C. J. DOHERTY,
Minister of Justice.

December 29th, 1916.

REPORT to the Lieutenant Governor of a Committee of the Executive Council of the Province of Manitoba on Matters Referred to their Consideration

The Honourable the Attorney General submits to Council a report setting forth,—

Whereas, the Honourable the Attorney General has considered the Report of the Privy Council of Canada, together with a Report of the Minister of Justice thereto attached regarding the amendments to the Jury Act passed at the last session of the Legislature of the Province of Manitoba and submits:—

1. That the Province has exclusive jurisdiction to legislate as to the number of Jurors to be summoned because

(a) Section 92 of the British North America Act allots to the Provinces, exclusively, the constitution and organization of criminal courts.

(b) The Courts accept this view. In Alberta, there is express judicial authority that the number of Jurors to be summoned for any panel is something which relates to the constitution and organization of the Courts, and is therefore under Provincial control. The Courts in Nova Scotia and Ontario have both expressly decided that the number of Grand Jurors to be summoned is something over which the Province has exclusive jurisdiction, and in one case, Mr. Justice Osler states "That no one will now argue that this is not a matter relating to the constitution of the Provincial Court, and therefore within the power of the Legislature." I have not been able to find any decision or dictum to the contrary.

(c) Provincial legislatures ever since Confederation have freely legislated as to Juries, and although their action has been questioned by the Dominion authorities in respect of some matters, legislation as to the number of Jurors to be summoned has never before been questioned.

2. The Act being within the exclusive jurisdiction of the Province, it is not proper for the Dominion Executive to sit in judgment on its propriety.

3. If the matter were not within the exclusive jurisdiction of the Province, it is submitted that any Dominion interference is unjustifiable.

(a) In 1869 the Dominion Parliament passed an Act adopting Provincial Legislation then in force, or thereafter to be put in force, in respect of Juries except in so far as the same might be altered by express Dominion enactments.

There is no Dominion Legislation as to the number of Jurors to be summoned, and therefore the Provincial Laws should unquestionably apply. The powers of the Provincial Legislatures under the Act of 1869 were upheld in 1882 in the case of *R. vs. O'Rourke*, 1 Ontario Reports, page 475.

As a substantially similar provision has been retained in the Dominion criminal statutes ever since 1869, it would appear that any Executive interference would be contrary to the settled policy of Parliament.

(b) Most of the other Provinces of Canada have since Confederation passed legislation in all essentials similar to the Act which is now in question. Their Acts have been in force for many years without any objection or interference.

(c) The law is in itself reasonable and necessary for the due expedition of the business of the Courts, and to meet the proper ends of Justice.

(d) The only reason suggested for the interference is an unwarranted imputation that the Provincial authorities charged with the enforcement of the criminal law might act unfairly.

(4) With all due respect to His Excellency's advisers, and while he appreciated their solicitude on behalf of prisoners now awaiting trial, the Honourable the Attorney General is of the opinion that the report referred to amounts to an attempt to interfere with the constitutional rights of the Province, and while reflecting on the fairness of the prosecuting authorities in the Province of Manitoba, entirely ignores the fact that the fixing of the number of Jurors to be summoned is left to the Judges of the Court of King's Bench, and that they are given no more power than has been given to and exercised by Judges in the Provinces of British Columbia, Alberta, Ontario, Nova Scotia, New Brunswick, the Yukon Territory and the North-West Territories, for many years.

On the recommendation of the Honourable the Minister, Committee advise—

That the undertaking or assurance asked for by His Excellency's advisers be not given.

Respectfully submitted,

T. C. MORRIS,

Chairman.

Executive Council Office, December 29th, 1916.

(Approved 13 February, 1917)

DEPARTMENT OF JUSTICE, OTTAWA, 31st January, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copy of a report of a Committee of the Executive Council of the province of Manitoba, approved by His Honour the Lieutenant Governor on 29th December, 1916, embodying a report of the Attorney General of the province upon the order of Your Excellency in Council of 11th December, 1916, with regard to the recent jury legislation of Manitoba, by which, for the reasons stated by the Attorney General, the local Government declines to give any undertaking or assurance with regard to the conduct of prosecutions in the selection of petit juries summoned under the Act in question.

The Attorney General argues that the Act is *intra vires* of the provincial legislature, and this point may, but only for the purposes of this discussion, be conceded. The question whether, as maintained by the Attorney General, the province has

exclusive jurisdiction, as connected with the constitution of the courts,' to prescribe the number of jurors to be summoned does not arise, and the undersigned does not propose to consider it here, but he observes that it appears by the observations of his predecessors in reviewing provincial legislation relating to juries in criminal cases, including those of the Honourable Edward Blake upon the Manitoba Juries Act of 1876, that the provisions in question have been thought to trench upon criminal procedure and to be sustainable rather by reason of the confirmatory Dominion legislation than because of the inherent powers of the provinces. The undersigned endeavoured to make it clear by his report, which was approved by the said Order in Council of 11th December, 1916, that the objection to the legislation did not depend upon any question of its validity. Indeed if the Act were invalid it could have no effect to create prejudice, although its provisions might lead to undesirable litigation.

The ground upon which the undersigned ventured to suggest that the local government should give an assurance of its intention assumes the constitutionality of the local statute, but suggests that, having in view the provisions of the Criminal Code, it was capable of an application which might prejudice the fair trial of criminal causes.

The material difference of opinion as between the Attorney General of Manitoba and the undersigned is evidenced by paragraph 3 (c) of the Attorney General's report, in which it is stated "that the law is in itself reasonable and necessary for the due expedition of the business of the courts and to meet the proper ends of justice," upon which the Attorney General proceeds to state that there is an unwarranted imputation that the provincial authorities charged with the enforcement of the criminal law might act unfairly.

As to the question of the reasonableness or necessity of the legislation of the civil business of the courts, the undersigned does not presume to express any view; the quality of the provision was questioned solely because of the effect which the enactment would have upon criminal procedure in relation to the right of standing by, and it is, in the humble opinion of the undersigned, not reasonable or necessary that a right uncontrolled judicially to require jurors to stand by in criminal causes to a number exceeding forty-eight should under ordinary conditions exist or be exercised. It is upon this view alone that the undersigned suggested that he might consider the disallowance of the statute.

The undersigned does not understand the Attorney General to question the authority of Parliament to regulate the rights of the parties in respect to the selection of jurors at criminal trials. Chief Justice Hagarty of Ontario, in the very passage of the well-known case upon which the Attorney General relies, after reference to the Dominion enactment of 1869 as legislation by relation and reference to provincial law, says that "the Dominion Parliament is supreme in criminal law and procedure, and may I assume exercise its powers in such fashion as it may deem expedient."

The propriety of exercising the power of disallowance for the purpose of preventing conflict between provincial legislation and Dominion policy is maintained by the eminent constitutional authority of the late Hon. David Mills, who, when Minister of Justice in 1898, recommended to the Governor General in Council the disallowance of a statute of the province of Prince Edward Island upon the view expressed in his report that "the power of disallowance has, however, been vested in Your Excellency, not only for maintaining the constitutional lines of legislative authority, but also for preventing the provincial legislatures from interfering with Dominion policy in matters in which it is competent under the constitution to the Dominion Government to have a policy. There may be provincial legislation which can have effect until superseded by Parliament, and as to such the undersigned apprehends the power of disallowance may be properly exercised if the legislation be in the opinion of Your Excellency's Government prejudicial to the Dominion interests." Indeed the undersigned does not perceive that there has been any difference of opinion

among his predecessors as to the right or the reasonableness of invoking the power of disallowance for the purpose of harmonizing provincial legislation with the general policy in relation to matters within the legislative authority of Parliament.

The Attorney General emphasizes the fact, which he says has been entirely ignored, that the fixing of the number of jurors to be summoned is by the local statute left to the judges of the Court of the King's Bench. This, nevertheless, is one of the provisions of the statute which the undersigned quoted, but it does not and indeed could not commit authority to the judges with respect to the exercise of the right of the prosecuting officer to require any number of jurors from the authorized panel to stand by, and for that reason affords to a prisoner no judicial security.

In three of the provinces which the Attorney General mentions as having conferred power upon their judges to increase the number of the ordinary panel, the fixed number is less than 48; at the common law, under which the rights of the prosecution and of the accused to challenge or require jurors to stand aside were developed, the sheriff commonly returned 48 jurors for a session of gaol delivery, oyer and terminer, and of the peace; and it was probably in consequence of the common law practice that a number not in excess of 48 was limited by the legislation of Manitoba and those provinces which restrict the ordinary panel. It is conceivable that there may be conditions in which the panel should in the interests of the due administration of justice be enlarged, but the undersigned apprehends that then the right of the prosecution to require jurors in excess of the ordinary panel to stand aside should, in the interests of justice, be subjected to judicial control. The undersigned proposes therefore to introduce into Parliament a measure intended to give effect to this view; but as a session of Parliament is now in progress, and as the conclusions of Your Excellency's Government upon the subject are made known by the correspondence ensuing upon the Manitoba legislation, the undersigned is disposed to think that it is unnecessary to recommend any further action with regard to this particular statute; disallowance is moreover to be avoided, unless necessary, by reason of the fact that the method of legislation adopted by Parliament has unfortunately so entwined the provisions competent to the Dominion with those for which the provinces are responsible that the exercise of the power vested in Your Excellency in the present case, while effecting the salutary object of adapting criminal procedure in Manitoba to the views of Your Excellency's Government, would at the same time prevent the operation of a measure presumably designed to regulate civil procedure in the manner required by the legislature.

The undersigned made no imputation of unfair motives, but he considered it a part of his duty in the public interest to see that the provisions of the Criminal Code, for which the Parliament is responsible, were not indirectly extended by means of local legislation so as possibly to produce injustice; he did not even imagine that his proposal would be received otherwise than with approval by the Attorney General, and he apprehends that the local authorities might very readily, without seeking for cause of offence which was not intended, have acquiesced in the suggestion which the undersigned submitted and which he conceives to have been perfectly reasonable.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province of Manitoba, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

1917, (1918), 1919, 1920

Reports on the Statutes for the years 1917, 1919 and 1920 (The Statutes for 1918 were not reported on) were approved by the Governor in Council but contain no comments; the Statutes are left to such operation as they may have.

BRITISH COLUMBIA

59th VICTORIA, 1896

2ND SESSION—7TH LEGISLATURE

(Approved 27 November, 1896.)

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of British Columbia in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on the 8th July, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 10, 21, 37, 50 and 55, which are the subjects of a separate report.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 30 November, 1896.)

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon the following Acts of the Province of British Columbia, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 17th April last, and received by the Secretary of State for Canada on the 8th July last.

Chapter 10. "An Act respecting Co-operative Associations."

Section 17 provides, among other things, that if any person obtains possession by false representation or imposition of any property, moneys, securities, books, papers, or other effects of an Association, he shall be liable on conviction to a penalty not exceeding one hundred dollars and costs, and in default of payment to imprisonment.

This legislation appears to affect the subject of Criminal law and the offence stated has been declared criminal by the Criminal Code, 1892, and punishment has been thereby prescribed for such an offence. The objection, however, is not of sufficient importance to call for the exercise of the power of disallowing the Act which contains it, but the undersigned recommends that the provision be considered by the Provincial Legislature with a view to its repeal.

Chapter 21. "An Act to preserve the Forests from Destruction by Fire."

Section 6 provides that all locomotive engines used on any railway which passes through any fire district shall be provided with the most approved and efficient means

to prevent the escape of fire from the furnaces of such engines, and that the smoke-stack of each engine shall be provided with a bonnet or screen of a certain description.

Section 7 provides that it shall be the duty of every engine-driver in charge of such locomotive engines passing over a railway within the limits of any fire district to see that such appliances are properly used and applied; and Section 8 enacts a penalty for neglect or refusal to comply with the provisions above mentioned.

The undersigned observes that, while these requirements are undoubtedly applicable to railways within the legislative authority of the Province, it is doubtful, or more than doubtful, whether they can have effect as to railways to which the Railway Act of Canada applies.

Chapter 37. "The Municipal Clauses Act."

In recommending that this Act be left to its operation the undersigned would observe that some of the powers to make by-laws which the Act purports to confer upon Municipal Councils are expressed in terms so general as to include authority which a Provincial Legislature could not confer. For instance, power is given to make by-laws with respect to the following matters, among others:—

(21) The Prevention of Cruelty to Animals;

(69) For regulating, with a view to preventing the spread of infectious or contagious diseases, the entry or departure of boats or vessels, and the landing of passengers and cargoes, from such boats or vessels, or from railway carriages or cars, and the receiving of passengers or cargoes on board of the same;

(75) For preventing the posting of indecent placards, writings or pictures, or the writings of indecent words, or the making of indecent pictures or drawings on walls, fences, trees, or rocks, in streets of public places;

(76) For preventing vice, drunkenness, swearing, obscene, blasphemous or grossly insulting language and other immorality and indecency.

It is doubtless open to the municipality in the execution of the powers granted by these clauses to make by-laws which would not be *ultra vires*, and the undersigned does not consider it necessary to do more than point out that the authority cannot legally be so acted upon as to affect subjects which belong to Dominion legislation under Section 91 of "The British North America Act."

Chapter 50. "An Act to incorporate the Alberni Water, Electric and Telephone Company, Limited."

Section 8 authorizes the Company to appropriate and use the waters of Stamp and Sproat rivers.

Chapter 55. "An Act to amend an Act to incorporate the Consolidated Railway and Light Company, and to consolidate certain Acts relating thereto, and to change the name thereof to the Consolidated Railway Company."

Section 42 empowers the Company to take and divert the water of Seymour Creek and Capilane River.

The undersigned in his report of even date herewith upon Section 2 of Chapter 73, and Section 6 of Chapter 74 of the Statutes of the Province of Quebec, 1895, states as follows:

"It has been pointed out on several occasions by preceding Ministers of Justice in their reports upon the legislation of the various Provinces, that provisions similar to the above are objectionable, in so far as they relate to rivers which are claimed on behalf of the Dominion to have become the property of the Dominion under the British North America Act."

"The Supreme Court of Canada has recently given its decision upon certain questions referred to that Court for determination by Your Excellency in Council.* Some of these questions involve the inquiry as to the legislative authority of the Dominion and the Provinces respectively with regard to rivers and navigable waters. Your Excellency's Government intend to have these questions submitted to the Judicial Committee of Her Majesty's Privy Council

* (In *re* Jurisdiction over Provincial Fisheries.)

upon appeal, and pending their final determination there, the undersigned considers that it would be improper to disallow either of the Statutes containing these questionable provisions."

The Statutes containing the sections now in question should, for the reasons thus stated, likewise be left to such operation as they may legally have.

Section 59 of Chapter 55 purports to cover ground which had previously been occupied by provisions of the Criminal Code, 1892, and the constitutionality of the section is on that account open to objection or to question.

Notwithstanding these objections or questions the undersigned is of opinion that the Acts containing the sections mentioned in this report should not be disallowed, and recommends that a copy of the report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

60th VICTORIA, 1897

3RD SESSION—7TH LEGISLATURE

Extract from the letter of the Lieutenant Governor of British Columbia to the Secretary of State of 14th May, 1897.

"I have thought it advisable to reserve for the pleasure of His Excellency the Governor General in Council, Bill No. 40, an Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts.

My reasons for doing so are that its provisions appear to me to be exceptional, and I am in doubt whether they come within the competence of the Local Legislature.

Clauses 4 and 5 of the Bill appear to affect the standing of Aliens in the Province after becoming British subjects, and should I be correct in my conclusions, legislation of this character, should it become law, might seriously interfere with our International relations and Federal interests."

The Consul General for Japan to His Excellency the Governor General

CONSULATE OF JAPAN, VANCOUVER, B.C., 1st June, 1897.

YOUR EXCELLENCY,—In reference to my telegraphic despatch of the 17th and also to my despatch under date of the 19th ult., I have the honour of informing Your Excellency that I have been instructed by H. I. Japanese Majesty's Government to protest against Your Excellency giving assent to the particular clauses containing the word "Japanese" in the so-called Oriental Labour Bill, submitted by the Lieutenant Governor Dewdney to Your Excellency's decision, on the ground that the said Bill, so far as it concerns the Japanese, is the most unjust and unfriendly measure ever taken by any civilized Government against a friendly nation of Great Britain and her dependencies.

I have therefore the honour of protesting against Your Excellency giving assent to the Bill above referred to, and also of calling your serious attention to the various facts in connection with the passage of the said Bills by the British Columbia Legislatures and the insertion of the word "Japanese" thereto.

The Bill originally had not contained the word "Japanese," but an amendment of inserting them was made by a member, and then it was effected without a discussion and even an explanation why this insertion of the words "Japanese" was declared necessary was not given by the members.

The action on the part of the Local Legislature proves that the insertion of the words "Japanese" in the Bill was entirely uncalled for and never for a moment warranted by any facts whatever. They are, it appears, solely planned to do wrong and injustice to the interest and dignity of the Japanese subjects residing in this Province.

Although hardly necessary, I may point out that the passage of such a Bill by one of the Provincial Legislatures, and of Your Excellency granting the Royal assents thereto will tend eventually to the manifestation of an unfriendly feeling by the local people towards the Japanese residents and especially in the form in which the said Bill has passed the British Columbia Legislatures it will be obvious to Your Excellency that the Japanese subjects are to be discriminated alike the Chinese and that the full rights and liberty provided for in the Treaty between Japan and Great Britain will no longer be respected. The result of such unfair and unfriendly measures on the part of the Canadian Government had they become law, would very naturally have led to the serious complications between the nations interested.

It is my sincere and earnest desire, therefore, that Your Excellency's fair and just decision will result in the Royal assent being withheld from a measure which would be grossly unjust and unfriendly to the people of one of Her Britannic Majesty's friendly powers, while being of no real benefit to the welfare and prosperity of the Province concerned.

I have &c.,

His Excellency
The Earl of Aberdeen.

TATSZGORO NOSSE,
H.I.J.M.'s Consul General for Canada.

(Approved 20 October, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of British Columbia in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 21st day of May, 1897, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapters 1, 2, 17, 62 and 67, which will form the subject of separate reports.

The undersigned recommends that a copy of this report, if approved, be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

(Approved 15 December, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a reserved Bill passed by the Legislative Assembly of the Province of British Columbia at the last sittings of the Legislature (1897) intituled "An Act relating to the employment of Chinese or

Japanese persons on works carried on under franchises granted by private Acts," and also the report of His Honour the Lieutenant Governor of the Province to the Honourable the Secretary of State, in which His Honour reports that he has thought it advisable to reserve the Bill for the pleasure of Your Excellency in Council, because its provisions appear to His Honour to be exceptional, and he is in doubt whether they come within the competence of the Local Legislature. His Honour further states that Sections 4 and 5 of the Bill appear to affect the standing of aliens in the Province after becoming British subjects; and that, should he be correct in his conclusions, legislation of this character, should it become law, might seriously interfere with international relations and Federal interests.

There has also been referred to the undersigned in connection with the Bill, a copy of a communication addressed to Your Excellency by His Imperial Japanese Majesty's Consul General for Canada, in which the Consul General states that he has been instructed by his Government to protest against Your Excellency giving assent to the clauses of this Bill containing the word "Japanese" upon the ground that the Bill, so far as it concerns the Japanese, is the most unjust and unfriendly measure ever taken against a nation friendly to Great Britain and her dependencies. The Consul General also refers to the Treaty between Great Britain and Japan and some matters connected with the passage of the Bill through the House of Assembly.

The first clause of the Bill provides that it may be cited as the "Alien Labour Act, 1897." The Bill proceeds to provide in effect that in case of any Act passed thereafter granting to any person, or body corporate the right of constructing certain works therein mentioned, or the right to carry on any trade, business, occupation or calling, or granting to any person, or body corporate any property, rights or privileges whatsoever, no Chinese or Japanese person shall be employed in connection with or in relation to any of the works, rights, trade, business, occupation or property so authorized, and in the event of such employment that the person by whom such Chinese or Japanese shall be employed, shall be liable to a penalty. The word "Chinese" is defined to mean any native of the Chinese Empire or its dependencies, not born of British parents, and to include any person of the Chinese race; and similarly the term "Japanese" is defined to mean any native of the Japanese Empire or its dependencies not born of British parents, and to include any person of the Japanese race.

The undersigned observes that by Section 4 of "The Coal Mines Regulation Amendment Act, 1890," of British Columbia, it was enacted in effect that no Chinamen should be employed in or allowed to be for the purpose of employment in any mine to which the amended Act applies below ground. The validity of that Act has recently been considered by the Supreme Court of British Columbia, under a reference from the Executive Council of that Province, and the Court has pronounced judgment, declaring the enactment constitutional. The undersigned is informed that an appeal is now pending to the Supreme Court of Canada from the said judgment, the appeal being entitled in the cause of the Union Colliery Company of British Columbia, limited liability appellants, against the Attorney General for British Columbia, and others, respondents.

The judgment of the Supreme Court of British Columbia in so far as it is applicable to the enactment under consideration is favourable to its validity. That judgment is, however, under appeal, and the undersigned considers also that there are reasons affecting the authority of the Legislature to enact the present measure which may not apply to "The Coal Mines Regulation Amendment Act, 1890."

The Legislature in adopting a short title for the Bill in question has considered "Alien Labour Act, 1897," to be an appropriate and comprehensive description and the Bill if allowed to go into operation would affect principally the right to employment of Chinese or Japanese who are aliens. The main intention appears to be to disqualify Chinese and Japanese aliens from employment. The legislation may, therefore, aptly be regarded as affecting aliens, but the subject of naturalization and

aliens has been referred to the exclusive legislative authority of the Parliament of Canada, and the undersigned apprehends that, unless the measure in question can be more appropriately classed under the category of property and civil rights, or some one or more of the other enumerations contained in Section 92 of "The British North America Act," it may be regarded as included in the subjects belonging to the exclusive authority of the Dominion. The undersigned does not, however, consider it necessary at present to determine whether Section 92 contains any better fitting classification, because the doubt which must exist in such an inquiry constitutes sufficient reason for Your Excellency declining to take any action with regard to this Bill which if assented to by Your Excellency would operate, if at all, by reason of the authority of the Provincial Legislature under Section 92.

There are other considerations referred to by the Lieutenant Governor and by the Consul General affecting the propriety of the legislation, assuming it to be *intra vires*.

It is stated that the Bill should it become law might seriously interfere with international relations and Federal interests, and that the measure is unfair and unfriendly and will tend to disagreement between residents of the Province.

For the reasons already stated the undersigned is not prepared to recommend that the Bill should come into effect by reason of any action on the part of Your Excellency's Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

(Approved 20 October, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon the following Acts passed by the Legislature of the Province of British Columbia, in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 21st day of May, 1897, viz:—

Chapter 17. "An Act to amend and consolidate the law relating to Lunatic Asylums and the Care and Custody of the Insane."

Section 51 provides that certain persons who may sign orders, statements or certificates under any section of the Act shall not be liable to any civil or criminal proceedings on the ground of want of jurisdiction, or on any other ground if they have acted in good faith and with reasonable care.

The undersigned observes that a Provincial Legislature has no authority to exempt any person from such criminal proceedings as are authorized by the Dominion Parliament, and that this section in so far as it attempts to make any such exemption is *ultra vires*. The undersigned does not consider, however, that the Statute should on that ground be disallowed.

Chapter 62. "An Act to incorporate the South Kootenay Water Power Company."

Chapter 67. "An Act to incorporate the Okanagan Water Power Company."

Each of these Statutes contains a section, namely 33, providing a penalty for malicious injury to the property of the Company. The Parliament of Canada under its authority to legislate with regard to Criminal Law has already dealt with the subject of malicious injury to property, and that legislation would cover the offences sought to be created by the sections in question. The sections seem strictly to relate to Criminal Law, and occupying ground which has been already

traversed by Parliament are, in the opinion of the undersigned, *ultra vires*. If a question should arise with regard to them they may be so declared by the Courts, and the undersigned does not consider that any harm would ensue from leaving these Statutes to their operation.

The undersigned recommends that the Statutes mentioned in this report be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice

(Approved 8 November, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 20th October, 1897

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 2 of the Statutes of the Province of British Columbia, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 21st of May, 1897, intituled "An Act for the Incorporation and Regulation of Joint Stock Companies and Trading Corporations."

This Act provides for the incorporation and regulation of joint stock companies. The word "company" as used in the Act is defined to mean any company incorporated under the Act for any purposes or objects to which the legislative authority of the Legislature of British Columbia extends, except the construction and working of railways and the business of insurance; and the expression "extra-provincial company" is defined to mean any duly incorporated company other than a company incorporated under the laws of the Province of British Columbia.

Part VI of the Act, which is entitled "Licensing and Registration of Extra-Provincial Companies," provides among other things, that unless otherwise provided by an Act, no extra-provincial company having gain for its purpose and object shall carry on any business within the scope of this Act in the Province unless and until it shall have been duly licensed or registered under the Act, and thereby expressly authorized to carry on such of its business as is specified in the license or certificate of registration, and any such company which fails or neglects to obtain such license or certificate of registration shall incur a penalty of \$50. There are special provisions with regard to companies incorporated under the laws of Great Britain or Ireland or of the Dominion of Canada, of the old Province of Canada, or of any of the Provinces of Canada, which provide in effect that any extra-provincial company so incorporated and authorized by its charter and regulations to carry out or effect any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends, may obtain a license authorizing it to carry on business within the Province on compliance with the provisions of the Act, and on payment to the Registrar of certain fees set forth in a schedule to the Act. The provisions of the Act, compliance with which is required, in order to the obtaining of such a license, are in addition to payment of the required fees, the filing with the Registrar of the charter and regulations of the company, an affidavit or statutory declaration that the company is still in existence and authorized to transact business under its charter, a copy of the last balance sheet of the company, the auditor's report thereon and a power of attorney from the company to some person residing within the Province where the head office of the company in the Province is situate to act as attorney of the company.

The Act appears to intend, therefore, that upon compliance with these conditions the company shall be entitled to a license.

The general scope of the Act appears to provide for the incorporation of companies, which may be incorporated under the authority of the Province, the distribution of the capital and liability of the shareholders of such companies and their powers, management and administration.

It appears to the undersigned, therefore, that the provisions of the Statute with regard to the licensing of companies incorporated by the Dominion Parliament are not intended to affect the execution of powers which could not be competently conferred by the Provincial Legislature, and that the Act was not intended to impose any condition upon the exercise by a Dominion Corporation of powers conferred by Parliament within the scope of the subjects specially enumerated in Section 91 of the British North America Act. If the Act were intended to apply to such companies it would be necessary to consider the propriety of its disallowance upon the grounds which led to the disallowance of a recent Statute of the Legislature of Manitoba (58-59 Victoria, Chapter 4). See the report of Sir Charles Hibbert Tupper, when Minister of Justice, approved by Your Excellency on 8th November, 1895, and the report of Mr. Dickey, his successor, approved on 25th March, 1896.

It is true that the Parliament of Canada has authority, not apparently by reason of any of the special subjects of legislation enumerated in Section 91, but by force of its general authority to legislate for the peace, order and good government of Canada, to incorporate companies with powers which would otherwise be exclusively within Provincial authority where such powers are to be exercised by the company within two or more Provinces of the Dominion, and it may be that such companies under the provisions in question would be required to take out licenses in order to entitle them to carry on their business in British Columbia.

The undersigned observes, however, that no power is attempted to be conferred by this Act which would authorize the licensing authority in refusing a license to such a company where the company had complied with the requirements of the Act which seem not unreasonable as to the filing of information and payment of fees, and although there may be different views as to the power of a Provincial Legislature to impose such a restriction upon any company incorporated under the legislative authority of Parliament, yet the undersigned considers in view of the reasons which may be urged in favour of the Provincial rights he would not be justified in recommending the disallowance of this Act, and he recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

Report of the Minister of Justice to the Governor General on Reserved Bill 40

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1897.

To His Excellency the Governor in Council:

There has been referred to the undersigned a copy of a communication of the 18th instant from Your Excellency's Secretary, requesting for the information of Your Excellency that it be explained whether it be the intention of the Committee of the Privy Council to allow the Bill passed by the British Columbia Legislature in 1897, relating to the employment of Chinese and Japanese persons to become law owing to no action being taken on the part of Your Excellency in Council.

The undersigned presumes that this inquiry relates to the Bill which was the subject of a report on the 15th of October last by the late Minister of Justice, which report is now before Your Excellency for approval.

The undersigned observes that if effect were given to the recommendation contained in that report the Bill would not become law; it would simply remain inoperative by reason of the absence of any assent thereto by the constitutional representative of Her Majesty.

The Governor of a Province, when a Bill which has passed the Legislature is presented to him for assent may in his discretion, subject to the provisions of "The British North America Act," and to his instructions, either assent thereto in the Queen's name or withhold the Queen's assent, or reserve the Bill for signification of Your Excellency's pleasure.

In the present case the Lieutenant Governor of British Columbia saw fit to adopt the latter course and he reserved the Bill. The Bill, if it is to go into operation at all, must therefore have effect by force of Your Excellency's assent, but the advice tendered by the Committee of the Privy Council is that Your Excellency take no action with regard to the Bill.

It will remain for the Provincial Legislature to re-enact the measure if it should see fit to do so, and then if the Bill as re-enacted be assented to by the Lieutenant Governor the question as to the propriety of its disallowance may be considered by Your Excellency in Council. Without the assent of Your Excellency, however, the present Bill can never receive the force of law.

Respectfully submitted,
DAVID MILLS,
Minister of Justice.

61st VICTORIA, 1898

4TH SESSION—7TH LEGISLATURE

(Approved 17 December, 1898)

DEPARTMENT OF JUSTICE, OTTAWA, 8th November, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of British Columbia, passed in the sixty-first year of Her Majesty's reign (1898), and received by the Secretary of State for Canada on 8th June, 1898, and he is of opinion that these Statutes may be left to their operation without comment, with the exception of those hereafter specially referred to.

Chapter 40. "An Act to give effect to the Revised Statutes of British Columbia."

This Statute relates to the recent revision of the Provincial Statutes and gives effect to the revision. Without referring particularly to the various objections which have been stated in the reports of the undersigned's predecessors in office upon the Statutes contained in the revision from time to time as they were enacted, the undersigned intends that these objections, so far as applicable, shall be considered to apply to the Revised Statutes. Having regard to previous comments and to the above observation, the undersigned does not consider it necessary to make any special remarks with regard to any of the Revised Statutes other than Chapter 107, "The Jurors' Act," as to which he observes that Sections 75 to 82 inclusive relate to juries in criminal cases, and appear to contain substantially re-enactments of the corresponding provisions of the Criminal Code, 1892. These affect matters of criminal procedure and are *ultra vires* of the Legislature. The undersigned does not propose on that account that the

Statute should be disallowed, because the provisions in question are not inconsistent with the Criminal Code, and to disallow the Statute which gives effect to the revision might cause serious inconvenience. It is very undesirable, however, that a Provincial Legislature should enact rules of criminal procedure, even although they be copied from the Criminal Code. Such rules can receive no effect from Provincial enactment, and as amendments are being frequently made to the Code, the Provincial rules might soon become inconsistent therewith, in which case there would be a liability to error from having incompatible rules affecting the same subject appearing upon the two Statute-books. The undersigned considers, therefore, that the sections in question should be repealed, and he recommends that the Provincial Government be requested to introduce the necessary legislation at the next session of the Legislature.

Chapter 49. "An Act respecting the Canadian Pacific Navigation Company, Limited."

Among the powers conferred upon the Company is one stated in the following terms:—

"(a.) To purchase, charter, hire, build or otherwise acquire steamships and other vessels of any description, and to employ the same in the conveyance of passengers, mails, cattle, produce and merchandise of all kinds, and in towing vessels of all kinds, and lumber, between any parts of British Columbia, and elsewhere, as may seem expedient, and to acquire any postal or other subsidies."

It is beyond the authority of a Provincial Legislature to authorize the establishment or operation of a line of steam or other ships connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province or between the Province and any British or Foreign Country. The words "and elsewhere as may seem expedient" in the paragraph quoted, would seem to indicate that it is intended to authorize the company to carry on a shipping business between the Province and other places outside the limits of the Province, and they should, for that reason, be struck out. The undersigned recommends that the matter be called to the attention of the Provincial Government, and that the Government be requested to state whether a proper amendment will be made within the time limited for disallowance. Meantime the undersigned withholds any further recommendation with regard to this Act.

Chapter 28. "An Act relating to the employment of Chinese or Japanese persons on works carried on under Franchises granted by Private Acts."

The Act is given the short title of the "Labour Regulation Act, 1898," and is in effect similar to the Bill passed by the Legislative Assembly of the Province of British Columbia in 1897, entitled "An Act relating to the employment of Chinese or Japanese persons on works carried on under franchises granted by private Acts," which was reserved by the Lieutenant Governor for the pleasure of His Excellency in Council, and which was the subject of a report by the predecessor in office of the undersigned, approved by His Excellency in Council on 15th December, 1897, and as to which His Excellency's Government declined to give effect.

The Act defines the terms "Chinese" and "Japanese," as meaning any native of the Chinese or Japanese Empires, or their dependencies, not born of British parents, and as including any person of the Chinese or Japanese races. It disqualifies from employment by persons or companies exercising Provincial franchises Chinese or Japanese persons as so defined, and renders such persons or companies employing them liable to penalties for such employment.

Chapter 10. "An Act to confirm an agreement between Her Majesty in right of Her Province of British Columbia, and Frank Owen and William John Stokes, and to incorporate the Cariboo-Omineca Chartered Company."

Section 30 of this Chapter provides that "No Chinese or Japanese persons shall be employed in the construction or operation of the undertaking, hereby authorized, under a penalty of five dollars per day, for each and every Chinese or Japanese person

employed in contravention of this section, to be recovered on complaint of any person under the provisions of the 'Summary Convictions Act.'"

Chapter 30. "An Act to amend the 'British Columbia Public Works Loan Act, 1897.'"

Chapter 44. "An Act to amend the Tramway Incorporation Act."

Chapter 46. "An Act to incorporate the Alice Arm Railway."

Chapter 47. "An Act to incorporate the Arrowhead and Kootenay Railway Company."

Chapter 48. "An Act to incorporate 'The British Columbia Great Gold Gravels Dredge-Mining Corporation.'"

Chapter 50. "An Act to incorporate the Canadian Yukon Railway Company."

Chapter 52. "An Act to incorporate the Downie Creek Railway Company."

Chapter 53. "An Act to incorporate the East Kootenay Valley Railway Company."

Chapter 54. "An Act to incorporate the Kitimaat Railway Company (Limited)."

Chapter 55. "An Act to incorporate the Kootenay and North-west Railway Company."

Chapter 56. "An Act to incorporate the Mountain Tramway and Electric Company."

Chapter 57. "An Act respecting the Nanaimo Electric Light, Power and Heating Company, Limited."

Chapter 58. "An Act to incorporate the North Star and Arrow Lake Railway Company."

Chapter 59. "An Act to incorporate the Portland and Stikine Railway Company."

Chapter 60. "An Act to incorporate the 'Red Mountain Tunnel Company, Limited.'"

Chapter 61. "An Act to incorporate the Revelstoke and Cassiar Railway Company."

Chapter 62. "An Act to incorporate the Skeena River and Eastern Railway Company."

Chapter 63. "An Act to incorporate the Skeena River Railway, Colonization and Exploration Company."

Chapter 64. "An Act to incorporate the 'South-East Kootenay Railway Company.'"

Each of the Statutes contains a provision similar to Section 30 of Chapter 10 prohibiting the employment of Chinese or Japanese persons by the respective companies.

These enactments have been the subject of complaint by the Japanese Minister at the Court of St. James, and the Japanese Consul at Vancouver. Copies of the communications of these gentlemen upon the subject are submitted herewith. In a despatch to His Excellency the Governor General from the Right Honourable the Principal Secretary of State for the Colonies, dated 20th July last, referring to this legislation, His Excellency is requested to impress upon his Ministers that restrictive legislation of the type of which the legislation in question appears to be, is extremely repugnant to the sentiments of the people and Government of Japan. It is stated that His Excellency should not fail to impress upon his Ministers the importance if there is any real prospect of a large influx of Japanese labourers into Canada, of dealing with it by legislation of the Dominion on the lines of the Natal Act, copy of which accompanies the despatch of the Colonial Secretary, and which, it is stated, is likely to be generally adopted in Australia. The undersigned submits herewith copy of the Natal Act in question.

It appears, therefore, that this matter is regarded by Her Majesty's Government as one of Imperial interest, and the representations of that Government upon the

subject should accordingly be carefully considered in determining upon the course to be pursued with regard to the legislation. In the meantime it may be well to communicate with the Government of British Columbia upon the subject, enclosing copies of the complaints of the Japanese Minister and Consul and of Mr. Chamberlain's despatch of 20th July, 1898, in addition to the communication which has been sent pursuant to the recommendations made by the undersigned on 28th October last. The Provincial Government should be asked to give the matter early consideration, and state, for the information of Your Excellency's Government, any facts or reasons which they desire to be considered. It is also important to ascertain whether the Provincial Government would be prepared to recommend the repeal of Chapter 28, and of the anti-Japanese and Chinese sections of the other Chapters above mentioned. A communication should also, in the opinion of the undersigned, be addressed by Your Excellency's Government to the Right Honourable the Principal Secretary of State for the Colonies, stating what has so far been done with regard to this legislation, and a copy of the Statutes should be forwarded to him. Further action, the undersigned considers, may be delayed until a reply has been received from the Provincial authorities.

The undersigned recommends that a copy of this report, if approved, and of the papers accompanying the same, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

His Imperial Japanese Majesty's Consul for Canada to the Governor General

VANCOUVER, B.C., 10th May, 1898.

YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to a provision in the several Railway Bills and other Private Bills which have passed or may pass through the Legislative Assembly of the Province of British Columbia and to which assent may be given by His Honour the Lieutenant Governor of that Province, prohibiting the employment of subjects of Japan in the construction or operation of the various railways or other undertakings which may be built or carried out under the sought-for charters. I, in the name of His Imperial Japanese Majesty's Government, most respectfully protest, as far as Japanese persons are concerned, against any such discrimination against the subjects of a friendly nation whose Government I have the honour to represent here, on the following grounds:—

1. That no satisfactory reason has been or can possibly be given for such discrimination in the Legislative Assembly above stated.

2. That the Article of the Revised Treaty of Commerce and Navigation between Japan and Great Britain provides that "the subjects of each of the two High Contracting Parties shall have full liberty to enter, travel, or reside in any part of the Dominions and possessions of the other Contracting Party, and shall enjoy full and perfect protection for their person and property," and the Article 15 of the same that "the High Contracting Parties agree that, in all concerns, commerce and navigation, and privilege, favour, or immunity which either Contracting Party has actually granted, or may hereafter grant, to the Government, ships, subjects or citizens of any other state shall be extended immediately and unconditionally to the Government, ships, subjects or citizens of the other Contracting Party, it being their intention that the trade and navigation of each country shall be placed in all respects by the other on the footing of the most-favoured nation."

3. That though the Dominion of Canada does not participate in the revised treaty referred to, it is contradictory to international usage that a nation, subject

to the duties and privileges of international law, be adversely discriminated in legislation in a friendly country.

4. That while the Legislators of the Province of British Columbia apparently look upon the Japanese in the same light as Chinese, it is a well-known fact that the education and character, customs and manners of Japanese are entirely different from those of Chinese, so that the principal argument of the Legislators is contradicted by the fact.

5. That the number of Japanese residents in British Columbia, not exceeding one thousand and odd persons, is less than one-tenth that of Chinese.

6. That the Government of Japan controls the movements of emigrants, by enforcing the Emigration Regulations, no intending emigrant being allowed to leave the country, unless the proper authorities are satisfied that he has good reason to emigrate to a certain country, so that the emigration into any country can be restricted to proper extent by the Government of Japan.

7. That such discrimination would tend to be detrimental to some extent to the development of the international trade between Canada and Japan which the Governments of the two countries are now endeavouring to foster.

I therefore most respectfully request that Your Excellency will give these provisions in the Bills referred to such consideration as will lead to Your Excellency's disallowance.

I avail, &c.,

S. SHIMIZU,

H.I.J.M.'s Consul.

His Imperial Japanese Majesty's Consul for Canada to the Governor General

VANCOUVER, B.C., 16th May, 1898.

YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to a section of a Bill intituled "An Act to amend the British Columbia Public Works Loan Act, 1897," which passed through the Legislative Assembly of the Province of British Columbia, and to which assent may be given by His Honour the Lieutenant Governor of that Province, prohibiting Chinese or Japanese persons to be employed or permitted to work in the construction or operation of any undertaking thereby subsidized. I, in the name of His Imperial Japanese Majesty's Government most respectfully protest, as far as Japanese persons are concerned, against such discrimination against the subjects of a friendly nation, whose Government I have the honour to represent here, on the same grounds as those that I have propounded in protesting against a provision of the same nature contained in the various Railway Bills and several Private Bills, in my despatch addressed to Your Excellency on the 10th instant, and most respectfully request that Your Excellency will give the section referred to such consideration as will lead to Your Excellency's disallowance.

I avail, &c.,

S. SHIMIZU,

H.I.J.M.'s Consul.

His Imperial Japanese Majesty's Consul for Canada to the Governor General

VANCOUVER, B.C., 20th May, 1898.

YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to the "Alien Labour Bill," which has passed through the Legislative Assembly of the Province of British Columbia, and to which the assent has been given this day

by His Honour the Lieutenant Governor of that Province. The object of the Bill obviously is "to prohibit the employment of Chinese and Japanese persons on works carried on under Franchises granted by Private Acts."

I, in the name of His Imperial Japanese Majesty's Government, most respectfully protest, as far as Japanese persons are concerned, against any such discrimination against the subjects of a friendly nation, whose Government I have the honour to represent here, on the following grounds:—

1. That no satisfactory reason has been or can possibly be given for such discrimination in the Legislative Assembly above stated.

2. That the Article I. of the Revised Treaty of Commerce and Navigation between Japan and Great Britain provides that "the subjects of each of the two Contracting Parties shall have full liberty to enter, travel or reside in any part of the Dominions and Possessions of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property," and the Article 15 of the same that "the High Contracting Parties agree that, in all that concerns commerce and navigation, any privilege, favour, or immunity which either Contracting Party has actually granted, or may hereafter grant, to the Government, ships, subjects, or citizens of any other state shall be extended immediately and unconditionally to the Government, ships, subjects, or citizens of the other Contracting Party, it being their intention that the trade and navigation of each country shall be placed, in all respects, by the other on the footing of the most-favoured nation."

3. That though the Dominion of Canada does not participate in the Revised Treaty referred to it is contradictory to the international usage that a nation subject to the duties and privileges of international law, be adversely discriminated in legislation in a friendly country.

4. That while the Legislators of the Province of British Columbia apparently look upon the Japanese in the same light as the Chinese, it is a well-known fact that the education and character, customs and manners, of Japanese are entirely different from those of Chinese, so that the principal argument of the Legislators is contradicted by the fact.

5. That the number of Japanese residents in British Columbia not exceeding one thousand and odd persons, is less than one-tenth of that of Chinese.

6. That the Government of Japan controls the movements of emigrants, by enforcing the Emigration regulations, no intending emigrant being allowed to leave the country, unless the proper authorities are satisfied that he has good reason to immigrate to a certain country, so that the emigration into any country can be restricted to proper extent by the Government of Japan.

7. That such discrimination would tend to be detrimental, to some extent, to the development of the international trade between Canada and Japan, which the Governments of the two countries are now endeavouring to foster.

I, therefore, most respectfully request that Your Excellency will give these provisions in the Bill referred to such consideration as will lead to Your Excellency's disallowance.

In addition hereto, I beg to state that "British Columbia Public Works Loan Act Amendment Bill" and all the "Railway Bills and other various Private Bills" containing a section prohibiting the employment of Japanese persons in works specified in such legislation, against all of which I have, in my despatches of the 10th instant and of the 16th instant protested, have this day received the assent of His Honour the Lieutenant Governor, and that I respectfully reiterate my request that Your Excellency will give these provisions in the Acts referred to such consideration as will lead to the disallowance of such legislation by Your Excellency.

I avail, &c.,

S. SHIMIZU,
H.I.J.M.'s Consul.

His Imperial Japanese Majesty's Consul for Canada to the Governor General
VANCOUVER, B.C., 28th May, 1898.

YOUR EXCELLENCY,—As a supplementary to my despatch of 10th inst., protesting against a provision in the several Railway Bills and other Private Bills of the Legislative Assembly of British Columbia, I have the honour of forwarding to Your Excellency herein inclosed a list of the Acts that have passed the Legislative Assembly in its last session and received the assent of His Honour the Lieutenant Governor of that Province on the 20th instant, in which anti-Japanese clauses will be found.

I have, &c.,

S. SHIMIZU,

H.I.J.M.'s Consul.

List of Acts in which the anti-Japanese clauses will be found:—

4. An Act to incorporate the Mountain Tramway and Electric Company.
5. An Act to incorporate the Kitmat Railway Company, Limited.
7. An Act to incorporate the Alice Arm Railway.
8. An Act to incorporate the South-East Kootenay Railway Company.
9. An Act to incorporate the Kootenay and North-west Railway Company.
12. An Act to incorporate the Revelstoke and Cassiar Railway Company.
13. An Act to incorporate the Skeena River and Eastern Railway Company.
14. An Act to incorporate the Arrowhead and Kootenay Railway Company.
15. An Act to incorporate the East Kootenay Valley Railway Company.
16. An Act to incorporate the North Star and Arrow Lake Railway Company.
17. An Act respecting the Nanaimo Electric Light, Power and Heating Company, Limited.
19. An Act to incorporate the British Columbia Great Gravel Dredge Mining Corporation.
20. An Act to incorporate the Skeena River Railway Colonization and Exploration Company.
21. An Act to incorporate the Downie Creek Railway Company.
26. An Act to incorporate the Canadian Yukon Railway Company.
28. An Act to incorporate the Red Mountain Tunnel Company, Limited.
37. An Act to authorize the Cowichan Lumber Company, Limited, to construct a dam and works on the Cowichan River, in the Quamichan District, and also to construct a tramway to connect the said dam and works with a point at or near the mouth of the Cowichan River.
39. An Act to incorporate the Portland and Stickine Railway Company.
41. An Act to amend the "Tramway Company Incorporation Act."

The Secretary of State for the Colonies to the Governor General

DOWNING STREET, 20th July, 1898.

MY LORD,—I have the honour to acknowledge the receipt of your despatches of the numbers and dates noted in the margin, in which you forwarded copies of various communications received by you from the Japanese Consul for Canada respecting the anti-Japanese legislation recently passed by the Legislature of British Columbia.

2. I shall be glad if you will lose no time in transmitting, in accordance with the request contained in my telegram of the 18th June, copies of the Acts to which M. Shimizu takes exception, together with the observations of your Ministers thereon.

3. In the meantime, I have to request that you will impress upon your Ministers that restrictive legislation of the type of which the legislation in question appears to be, is extremely repugnant to the sentiments of the people and Government of Japan, and you should not fail to impress upon them the importance, if there is any real prospect of a large influx of Japanese labourers into Canada, of dealing with it by legislation of the Dominion Parliament on the lines of the accompanying Natal Act which is likely to be generally adopted in Australia.

I have, &c.,

J. CHAMBERLAIN.

THE IMMIGRATION ACT, 1897.

ARRANGEMENT OF CLAUSES.

Preamble.

1. Short title.
 2. Exemptions.
 3. Prohibited Immigrants.
 4. Unlawful entry of prohibited immigrants.
 5. Entry permitted on certain conditions.
 6. Persons formerly domiciled in Natal.
 7. Wives and children.
 8. Liability of Master and Owners of ship for illegal landing of immigrants.
 9. Disabilities of prohibited immigrants.
 10. Contract for return of prohibited immigrants.
 11. Offence of assisting in contraventions.
 12. Offence of assisting contravention by persons named in Section 3.
 13. Bringing insane persons into Colony.
 14. Powers of police to prevent entry.
 15. Officers for carrying out Act.
 16. Rules.
 17. Punishments.
 18. Jurisdiction of Magistrates.
- Schedule A.
Schedule B.

WALTER HELY-HUTCHINSON,

Governor.

(No. 1, 1897.)

ACT.

"To place certain restrictions on Immigration."

Whereas it is desirable to place certain restrictions on Immigration:—

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Natal, as follows:—

SHORT TITLE. EXEMPTIONS

1. This Act may be known as "The Immigration Restriction Act, 1897."

2. The Act shall not apply to:

(a) Any person possessed of a certificate in the form set out in the Schedule A to this Act annexed and signed by the Colonial Secretary, or the Agent General of Natal, or any officer appointed by the Natal Government for the purposes of this Act whether in or out of Natal.

(b) Any person of a class for whose immigration into Natal provision is made by law or by a scheme approved by Government.

(c) Any person specially exempted from the operation of this Act by a writing under the hand of the Colonial Secretary.

(d) Her Majesty's land and sea forces.

(e) The officers and crew of any ship of war of any Government.

(f) Any person duly accredited to Natal by or under the authority of the Imperial or any other Government.

PROHIBITED IMMIGRANTS.

3. The immigration into Natal, by land or sea, of any person of any of the classes defined in the following sub-sections, hereinafter called "prohibited immigrants" is prohibited, namely:—

(a) Any person who, when asked to do so by an officer appointed under this Act, shall fail to himself write out and sign, in the characters of any language of Europe, an application to the Colonial Secretary in the form set out in Schedule B. of this Act.

(b) Any person being a pauper, or likely to become a public charge.

(c) Any idiot or insane person.

(d) Any person suffering from a loathsome or a dangerous contagious disease.

(e) Any person who, not having received a free pardon has within two years been convicted of a felony or other infamous crime or misdemeanour involving moral turpitude, and not being a mere political offence.

(f) Any prostitute, and any person living on the prostitution of others.

UNLAWFUL ENTRY OF PROHIBITED IMMIGRANT.

4. Any prohibited immigrant making his way into, or being found within Natal, in disregard of the provisions of this Act, shall be deemed to have contravened this Act and shall be liable, in addition to any other penalty, to be removed from the Colony, and upon conviction may be sentenced to imprisonment not exceeding six months without hard labour: Provided that such imprisonment shall cease for the purpose of deportation of the offender, or if he shall find two approved sureties, each in the sum of Fifty Pounds Sterling, that he will leave the Colony within one month.

ENTRY PERMITTED ON CERTAIN CONDITIONS.

5. Any person appearing to be a prohibited immigrant within the meaning of Section 3 of this Act, and not coming within the meaning of any of the sub-sections (c), (d), (e), (f), of the said Section 3 shall be allowed to enter Natal upon the following conditions:—

(a) He shall, before landing, deposit with an officer appointed under this Act the sum of one hundred pounds sterling.

(b) If such person, within one week after entering Natal, obtain from the Colonial Secretary, or a Magistrate, a certificate that he does not come within the prohibition of this Act, the deposit of one hundred pounds sterling shall be returned.

(c) If such person shall fail to obtain such certificate within one week, the deposit of one hundred pounds sterling may be forfeited, and he may be treated as a prohibited immigrant.

Provided that, in the case of any person entering Natal under this section, no liability shall attach to the vessel or to the owners of the vessel in which he may have arrived at any port of the Colony.

PERSONS FORMERLY DOMICILED IN NATAL

6. Any person who shall satisfy an officer appointed under this Act that he has been formerly domiciled in Natal, and that he does not come within the meaning of any of the sub-sections (c), (d), (e), (f), of Section 3 of this Act, shall not be regarded as a prohibited immigrant.

WIVES AND CHILDREN

7. The wife and any minor child of a person not being a prohibited immigrant shall be free from any prohibition imposed by this Act.

LIABILITY OF MASTER AND OWNERS OF SHIP FOR ILLEGAL LANDING OF IMMIGRANTS

8. The master and owners of any vessel from which any prohibited immigrant may be landed shall be jointly and severally liable to a penalty of not less than one hundred pounds sterling, and such penalty may be increased up to five thousand pounds sterling by sums of one hundred pounds sterling each for every five prohibited immigrants after the first five, and the vessel may be made executable by a decree of the Supreme Court in satisfaction of any such penalty, and the vessel may be refused a clearance outwards until such penalty has been paid, and until provision has been made by the master to the satisfaction of an officer appointed under this Act for the conveyance out of the Colony of each prohibited immigrant who may have been so landed.

DISABILITIES OF PROHIBITED IMMIGRANTS

9. A prohibited immigrant shall not be entitled to a license to carry on any trade or calling, nor shall he be entitled to acquire land in leasehold, freehold, or otherwise, or to exercise the franchise, or to be enrolled as a burgess of any borough, or on the roll of any township; and any license or franchise right which may have been acquired in contravention of this Act shall be void.

CONTRACT FOR RETURN OF PROHIBITED IMMIGRANTS

10. Any officer thereto authorized by Government may make a contract with the master, owners or agent of any vessel for the conveyance of any prohibited immigrant found in Natal to a port in or near to such immigrant's country of birth, and any such immigrant with his personal effects may be placed by a police officer on board such vessel, and shall in such case, if destitute, be supplied with a sufficient sum of money to enable him to live for one month according to his circumstances in life after disembarking from such vessel.

OFFENCE OF ASSISTING IN CONTRAVENTIONS

11. Any person who shall in any way wilfully assist any prohibited immigrant to contravene the provisions of this Act shall be deemed to have contravened this Act.

OFFENCE OF ASSISTING CONTRAVENTION BY PERSONS NAMED IN SECTION (F)

12. Any person who shall wilfully assist the entry into Natal of any prohibited immigrant of the class (f) in Section 3 of this Act shall be deemed to have contravened this Act, and shall upon conviction be liable to be imprisoned with hard labour for any period not exceeding twelve months.

BRINGING INSANE PERSONS INTO COLONY

13. Any person who shall be wilfully instrumental in bringing into Natal an idiot or insane person without a written or printed authority, signed by the Colonial Secretary, shall be deemed to have contravened this Act, and in addition to any other penalty shall be liable for the cost of the maintenance of such idiot or insane person whilst in the Colony.

POWERS OF POLICE TO PREVENT ENTRY

14. Any police officer or other officer appointed therefor under this Act, may, subject to the provisions of Section 5, prevent any prohibited immigrant from entering Natal by land or sea.

BRITISH COLUMBIA

OFFICERS FOR CARRYING OUT ACT

15. The Governor may from time to time appoint, and at pleasure remove, officers for the purpose of carrying out the provisions of this Act, and may define the duties of such officers, and such officers shall carry out the instructions from time to time given them by the Ministerial head of their Department.

RULES

16. The Governor in Council may from time to time, make, amend, and repeal rules and regulations for the better carrying out of the provisions of this Act.

PUNISHMENTS

17. The penalty for any contravention of this Act, or of any rule or regulation passed thereunder where no higher penalty is expressly imposed, shall not exceed a fine or fifty pounds sterling, or imprisonment, with or without hard labour, until payment of such fine or in addition to such fine, but not exceeding in any case three months.

JURISDICTION OF MAGISTRATES

18. All contraventions of this Act or of rules or regulations thereunder and suits for penalties or other moneys not exceeding one hundred pounds sterling shall be cognizable by Magistrates.

SCHEDULE A

Colony of Natal.

This is to certify that
 of _____ aged _____
 by trade or calling a _____
 is a fit and proper person to be received as an immigrant in Natal.
 Dated at _____ this _____
 day of _____
 (Signature)

SCHEDULE B

To the Colonial Secretary:

Sir,—I claim to be exempt from the operation of Act No. _____, 1897.

My full name is _____

My place of abode for the past twelve months has been _____

My business or calling is _____

I was born at _____

in the year _____

Yours, &c.,

Given at the Government House, Natal, this fifth day of May, 1897.

By Command of His Excellency the Governor.

THOS. K. MURRAY,
Colonial Secretary.

Letter from the Japanese Ambassador to the Marquis of Salisbury, forwarded on the 11th August, 1898, to the Governor General by the Secretary of State for the Colonies.

JAPANESE LEGATION, 3rd August, 1898.

M. LE MARQUIS,—The Legislative Assembly of the Province of British Columbia, in the Dominion of Canada, passed in the month of May last an Act "to prohibit the

employment of Chinese and Japanese persons on work carried on under the franchises granted by Private Acts," also another Act "To amend the British Columbia Public Works Loan Act, 1897," and several Railway and other Private Bills, all of which contain provisions prohibiting the employment of Japanese subjects in several works, public and private, under the penalty of a fine for each Japanese so employed. The Japanese Consul at Vancouver has, therefore, under instructions of the Imperial Government entered a protest to the Lieutenant Governor of the Province in the hope that the necessary approval of the Governor might be withheld from those enactments. His representations were, however, fruitless, and the Acts were approved by the Lieutenant Governor, and are now awaiting the assent of the Governor General of Canada.

My Government, although they confidently believe that the legislation so unfriendly and discriminating against Japanese subjects would not receive the sanction of the Governor General, have instructed me to call the attention of Her Majesty's Government to the matter.

The impropriety of such discriminating legislation against the subjects of a friendly State is evident in itself and requires hardly any comment on the part of my Government. The Japanese subjects in Canada are not large in number. So far as my Government are aware they have always been law-abiding and have done nothing that might necessitate a legislative action adverse to their interests. Moreover, in the opinion of my Government, such measures if allowed to become law, cannot but injuriously affect the cordial and commercial relations which now happily exist between Japan and the Dominion of Canada and which have every prospect of further developments in the near future. I have therefore the honour to ask the good offices of Your Lordship, so that Her Majesty's Government may see their way to exercise their influence with the Governor General of Canada in order that his assent may be withheld from the aforesaid legislation of British Columbia.

I have, etc.,

KATO.

Letter from the Imperial Japanese Consul to His Excellency the Governor General.

VANCOUVER, B.C., 9th February, 1899.

YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour of calling Your Excellency's attention to a paragraph in the speech of His Honour the Lieutenant Governor of British Columbia, delivered at the opening of the present session of the Legislative Assembly of that province, stating that "For the better protection of the miners in coal mines, a Bill will be laid before you prohibiting the employment underground of Japanese in these mines." I would at the same time beg to call Your Excellency's attention to Bill No. 43, entitled "An Act to amend the Coal Mines Regulations Act," which was recently proposed, seemingly in accordance with the statement of the paragraph above cited, by the Honourable the President of the Council to the Legislative Assembly of that province, and passed through that Assembly on the 8th day of this month. And also to the various private Bills that are before the House at present containing sections which prohibit the employment of Japanese in works authorized by such Acts. I respectfully beg to inclose herewith copies of the Bill No. 43, and also a sample of the private Bills referred to.

And urging the same objections to this legislation as I had the honour of urging against legislation of the same nature at the last session, I most respectfully request that Your Excellency will give this legislation such consideration as will lead to Your Excellency's disallowance of the same.

I avail, &c.,

S. SHIMIZU,

H.I.J.M.'s Consul.

BILL.

(No. 43, 1899.)

An Act to amend the "Coal Mines Regulation Act."

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Section 4 of chapter 138 of the Revised Statutes of British Columbia is hereby amended by inserting after the word "Chinaman" in the second line thereof, the words "or Japanese."

2. Section 12 of the said Act is hereby amended by inserting after the word "Chinamen," in the fourth line thereof, the word "Japanese."

BILL.

(No. 11, 1899.)

An Act to incorporate the "Vancouver Northern and Yukon Railway Company."

* * * * *

37. No Chinese or Japanese persons shall be employed in the construction of the undertaking or the working of the railway.

38. The preceding two sections are hereby declared to be the conditions upon which this Act is passed, and shall be binding upon bondholders and all other persons in any way interested in the said company or its property. In case either of said preceding two sections are violated, such violation shall work a forfeiture of all privileges granted by this Act, but no such forfeiture shall operate except upon proceedings instituted in the Supreme Court of British Columbia by the Attorney General.

* * * * *

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,

VANCOUVER, B.C., 28th February, 1899.

YOUR EXCELLENCY,—In addition to my protest recently presented against the legislation of the Province of British Columbia aimed at the prohibition of Japanese labour in certain undertakings, I respectfully beg to call Your Excellency's special attention to the Bill 60, intituled "An Act respecting Liquor Licenses," in which Japanese subjects are included among those declared ineligible to hold liquor licenses (*vide* the sections 22, 23 and particularly 36 of the Bill No. 60). This Bill was introduced to the House by the Honourable the Attorney General of the province, and passed through it on the 25th day of this month. To this, together with other Bills of a similar nature passed at the closing session, assent was given yesterday by His Honour the Lieutenant Governor of the province.

Your Excellency will observe that the discrimination in Bill No. 60 is a decided advance upon the former measures aimed against Chinese labour, inasmuch as this Bill now imposes restrictions on Japanese subjects in matters of trade also. It may also be taken, I think, as an indication that these anti-Japanese measures will not stop here in this province, unless the higher authorities are pleased to exercise their power.

I, therefore, respectfully beg leave to more emphatically reiterate my request that Your Excellency will give this legislation such consideration as will lead to Your Excellency's disallowance of the same.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU,

H.I.J.M.'s Consul.

Letter from the Japanese Ambassador to the Marquis of Salisbury, forwarded on the 8th March, 1899, to the Governor General by the Secretary of State for the Colonies.

JAPANESE LEGATION, 18th February, 1899.

M. LE MARQUESS,—The Japanese Consul at Vancouver has reported to me that the Legislature of the Province of British Columbia has recently passed a Bill at the instance of the Provincial Government entitled "Coal Mines Regulations Amendment Bill." The details of the Bill are not laid before me, but I understand that it has been formulated with the object of prohibiting the employment underground of Japanese in the coal mines, and thus it appears to be another instance of discrimination aimed at Japanese subjects in that province.

Several Bills with a similar purport, passed by the Legislature of the same province last year, have formed the subject of correspondence between Your Lordship and myself, and while my Government is deeply sensible of the solicitous attention which Her Majesty's Government, and, at their instance, the Government of Canada are paying with respect to the issue of those Bills, I feel compelled by this renewed action on the part of British Columbia to call the attention of Her Majesty's Government once more to the subject.

The exceptions which the Imperial Government have taken against the legislation of last year apply in the present case in their full scope and extent. Therefore, without reiterating the reasons which I set forth against such legislation in the letter which I had the honour to address to Your Lordship under date of August 3rd, 1898, I take the liberty of calling your attention to the fact, and requesting Her Majesty's Government to extend to the present instance the same enlightened policy which they have pursued in regard to the legislation of last year, with the confident assurance that such a policy cannot fail in augmenting the neighbourly relations existing between Japan and the Dominion of Canada.

I have, &c.,

KATO.

(Approved 17 March, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 8th March, 1899.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a communication addressed to the Honourable the Secretary of State for Canada from the Lieutenant Governor of British Columbia, transmitting a copy of a minute of the Executive Council of the province, approved on 24th February last, together with a report of the Provincial Attorney General referring to the observations of the undersigned contained in his report to Your Excellency of the 8th November last with regard to sections 75 to 82 inclusive of the Jurors' Act, chapter 107 of the Revised Statutes of British Columbia.

The undersigned has the honour to submit herewith copy of the said report of the Attorney General of British Columbia which was approved by the Executive minute.

The undersigned, in his report of 8th November last, referred to the sections in question, which re-enact certain provisions of the Criminal Code, 1892, with regard to juries in criminal cases, including those relating to challenges, keeping the jury together, and their maintenance and other proceedings during the trial, and the undersigned observed that these provisions affected matters of criminal procedure and were *ultra vires* of the Legislature. The undersigned, however, stated that he did not propose on that account that the statute should be disallowed, because the provisions in

question were not inconsistent with the Criminal Code, and to disallow the statute which gave effect to the revision might cause serious inconvenience. He recommended, however, that these sections be repealed by the Provincial Legislature.

The Attorney General of British Columbia in his report states that the opinion of the undersigned as so expressed is open to serious dispute, and he states that there is much argument to support the view that these sections relate to the constitution of the court rather than to criminal procedure, and that if his view should be sustained they would undoubtedly be within the jurisdiction of the Provincial Legislature. The Attorney General does not, however, reveal the argument by which he considers his view to be upheld, and in the absence of that information the undersigned entertains no doubt that the sections in question do strictly relate to the subject of criminal procedure, and that whatever argument there may be for provincial authority to enact such provisions as connected with the constitution of the court previous to Parliament dealing with the subject under its authority in matters of criminal procedure, there can be no reason for supposing that Dominion legislation is not to prevail. Moreover some of these sections cannot by any process of reasoning which the undersigned can imagine be referred to any matter connected with the constitution of the court.

The Attorney General states that these sections do not appear first in the Revised Statutes, and that they were originally passed a number of years ago. The Attorney General gives no reference, however, to the original enactments, but it is quite immaterial whether they had been previously enacted or not. The observations made by the undersigned with regard to them would equally hold in either case.

The statement of the Attorney General that it is unfair for the Minister of Justice to take advantage of the revision of the statutes to review statutes with a view to disallowance is not pertinent to the matter of discussion, because the undersigned stated expressly that he did not propose that the statutes should be disallowed. When a case arises, however, of an enactment appearing in the revised statutes of a province which, in the opinion of Your Excellency's Government, ought to be disallowed, it will be proper to consider how far the inconvenience of disallowing the whole revision in order to get rid of the objectionable enactment ought to affect the course which Your Excellency's Government should pursue. Cases certainly may be imagined where it would be in the public interest to disallow the whole revision. It will, however, be time enough to discuss such cases when they arise. In the meantime, the question raised by the Attorney General is of no practical importance, and has reference to no case which has yet occurred. The undersigned, therefore, declines to discuss it.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

(Approved by the Lieutenant Governor 24 November, 1899)

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to report, with regard to the report of the Honourable the Minister of Justice, dated the 8th of November, 1898, as to sections 75 to 82 (inclusive) of Chapter 107 of the Revised Statutes (being the Jurors' Act), which relates to juries in criminal cases. The Minister of Justice is of the opinion that these sections affect matters of criminal procedure, and are *ultra vires* of the Legislature.

The undersigned begs to suggest that this opinion is open to serious dispute. If the sections in question are, as the Minister states, matters of criminal procedure,

they would undoubtedly be *ultra vires* of the Provincial Legislature. The undersigned, however, contends that there is much argument to support the view that these sections relate to the constitution of the court rather than to criminal procedure, and if that view should be sustained, they would undoubtedly be within the jurisdiction of the Provincial Legislature.

It must be remembered that these sections do not first appear in the Revised Statutes, but were originally passed a number of years ago. They were not at the time disallowed by the Dominion Government.

It seems to the undersigned entirely unfair for the Minister of Justice to take advantage of the revision of the statutes to review statutes with a view to disallowance. Once the year had been allowed to lapse by the Dominion Government, it should be taken for granted that the statute in question is not to be disallowed. This view, it seems to the undersigned, must be clear when it is remembered that the only course for the Dominion Government now to pursue is to disallow the whole of the Revised Statutes if in the opinion of the Dominion Government any particular section was a fit subject for disallowance.

The undersigned cannot, in view of the unsettled question as to whether these sections are *ultra vires* or not, recommend that they should be repealed, as suggested by the Minister of Justice.

JOSEPH MARTIN,

Attorney General.

Dated the 22nd day of February, 1899.

(Approved 13 March, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, March 7th, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a copy of a Minute of the Executive Council of the Province of British Columbia, dated 16th February, 1899, approving a Report dated the 13th of the same month from the Minister of Finance and Agriculture, with regard to certain statutes of the said province passed in the year 1898, affecting the Chinese and Japanese.

These statutes are enumerated in a Report of the undersigned on the 8th November, 1898, approved by Your Excellency in Council on 17th December, 1898, and the Report of the provincial Minister is in reply to that portion of the Report of the undersigned which refers to the statutes in question.

The undersigned observes referring to the Immigration Restriction Act, 1897, of Natal, copy of which accompanied the despatch of the Right Honourable the Principal Secretary of State for the Colonies of 20th July, 1898, that, while the provisions of the Act are well adapted to exclude paupers, diseased persons and criminals, yet the Act does contain a provision (section 3a) which would probably have the effect of excluding all Asiatics of the class which would be affected by the British Columbia statutes in question.

Before determining, however, what course ought to be pursued by Your Excellency's Government in regard to these Acts, the undersigned is of the opinion that a copy of the Executive Minute of British Columbia and of the Report of the provincial Minister of Finance and Agriculture should be submitted to Her Majesty's Government, and he, therefore, recommends that they be transmitted, together with a copy of this Report, if approved, to Mr. Chamberlain, in order that he may submit any observations which he may deem proper for the consideration of Your Excellency's Government. Mr. Chamberlain should be informed at the same time that the time for disallowance of these Acts will expire on the 8th June, 1899.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

(Approved by the Lieutenant Governor 16 February, 1899)

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to report that he has had under consideration the communication from the Government of His Excellency the Governor General to His Honour the Lieutenant Governor, inclosing copies of a minute of the Committee of the Privy Council of Canada in reference to a despatch from His Majesty's Principal Secretary of State for the Colonies, inclosing copies of correspondence which has passed between the Foreign Office and the Japanese Minister in London and between the Foreign Office and the Colonial Office on the subject of certain statutes passed by the Legislature of British Columbia in the sixty-first year of Her Majesty's reign, and which contained provisions prohibiting the employment of Chinese or Japanese persons on works carried on under franchises granted by the said Legislature.

In his despatch of 20th July, 1898, to His Excellency the Governor General of Canada, Mr. Chamberlain states that "restrictive legislation of the type of which the legislation in question appears to be is extremely repugnant to the sentiments of the people and Government of Japan," and asks His Excellency to impress on his Ministers the importance, if there is any real prospect of a large influx of Japanese labourers into Canada, of dealing with it by legislation of the Dominion Parliament on the lines of the Natal Act.

It may be stated that legislation on the lines of the "Immigration Restriction Act, 1897," passed by the Legislative Council and Legislative Assembly of Natal, would not be within the power of the Legislature of this province, but would be within the competence of the Parliament of Canada, being somewhat similar to the Act passed by that body imposing a capitation tax of \$50 on each Chinese person coming into the Dominion.

While the Legislature of British Columbia would doubtless welcome any action by the Parliament of Canada designed to effect objects similar to those aimed at by the provisions in the statutes which are the subject of his communication from His Excellency's Government, it may be suggested that the provisions embodied in the Immigration Restriction Act of Natal would not be effectual for the desired purpose, although such legislation would impose restrictions on Japanese immigration that would probably be more repugnant to the views of the Government of Japan than those complained of in the legislation passed by the Legislature of this province.

The undersigned would point out that the statutes passed by the Legislature of this province imposing certain restrictions on the employment of Japanese in British Columbia, while, it is respectfully submitted, clearly within the power of that body, do not impose restrictions nearly as onerous or far-reaching as would be the case were registration enacted by the Parliament of Canada on the lines of the Immigration Restriction Act of Natal, which appears not to be considered objectionable by Her Majesty's Government. No limitation on the number of Japanese persons who may come into Canada is suggested by the statutes passed by the Provincial Legislature. No restriction is placed by those statutes on such persons pursuing any calling, occupation or employment—with one exception—which is not carried on under the authority of privileges or franchises conferred by the Legislature of British Columbia. That exception is working in coal mines, the Legislature, from the evidence placed before it, having come to the conclusion that the employment of Chinese or Japanese underground in coal mines is a source of danger.

All that is sought to be attained by the legislation in question is that Chinese or Japanese persons shall not be allowed to find employment on works, the construction of which has been authorized or made possible of accomplishment by the granting of certain privileges or franchises by the Legislature.

It will, therefore, be seen that the restrictive provisions are merely in the nature of a condition in agreements or contracts between the Provincial Government and particular individuals or companies whereby certain privileges, franchises, concessions, and, in some cases, also subsidies and guarantees are granted to such individuals or companies in consideration of only white labour being employed in the works which are the subject-matter of such agreements.

The same causes which have led the Legislature of Natal and the Australian Colonies to take measures to restrict the influx of large numbers of labouring people from Asia, exist in British Columbia. They are indeed more potent here on account of the shorter distance intervening between China and Japan and this province as compared with that between those countries and Australasia and Natal. It may also be pointed out in this connection that the possibility of great disturbance to the economic conditions existing here, and of grave injury being caused to the working classes of this country by a large influx of labourers from Japan, was so apparent, that the Government of Canada decided it was not advisable that the Dominion should participate in the revised treaty between Great Britain and Japan, whereby equal privileges were granted to the people of each nation in the country of the other.

The economic conditions in British Columbia and Japan and the standards of living of the masses of the people in the two countries differ so widely, that to grant freedom of employment to Japanese on such public works as are authorized to be carried out by Acts of the Legislature would almost certainly result in all such employment being monopolized by the Japanese to the exclusion of the people of this province. Therefore, while the Legislature has scrupulously abstained from any interference with the employment of Japanese by private individuals or companies, and has not sought to put any restriction on their engaging in any ordinary occupation or business, it has deemed it to be in the interests of the province to prohibit their employment on works or undertakings for which it has granted privileges or franchises. That such restrictions are not only judicious but necessary has been shown by the manner in which cheap Asiatic labour has in many cases entirely supplanted white labour on works to which no such restrictions, as those referred to, were attached.

While it would be a matter of profound regret if any action of the Government or Legislature of this province should cause Her Majesty's Government any embarrassment or impair its friendly relations with another power, it may be pointed out that there are other considerations of an Imperial character involved in this matter. It is unquestionably in the interests of the Empire that the Pacific province of the Dominion should be occupied by a large and thoroughly British population, rather than by one in which the number of aliens largely predominated and many of the distinctive features of a settled British community were lacking.

The former condition could not be secured were the masses of the people subjected to competition which would render it impossible for them to maintain a fair and reasonable standard of living.

For many years the evil effects of unrestricted Chinese immigration caused great agitation in British Columbia, and the imposition of the capitation tax of \$50 was the consequence. Since then greater facilities of communication with Japan and the opportunities for employment in British Columbia, arising from the development of its forests, mineral and fishing resources, have led to an influx of Japanese which has materially and injuriously interfered with white labour and has caused the Legislature to pass the statutes now under consideration. There is no reason to believe that this influx of Japanese is likely to diminish. On the contrary, there are many indications that it will become larger and that Japanese labour will, if some restrictive measures be not adopted, entirely supplant white labour in many important industries and be used almost exclusively on works carried out under franchises granted by the Legislature, and which are in many

cases aided by subsidies from the provincial treasury, largely with the object of opening up the province and inducing an immigration of desirable settlers.

The undersigned, therefore, recommends that a reply be made to the Government of the Dominion that His Honour's Government regrets that in the interests of British Columbia and of the labouring classes among its people, it cannot see its way to introduce a measure in the Legislature to repeal the provisions restricting the employment of Chinese and Japanese in the statutes referred to in the report of the Minister of Justice, approved by a minute of the Committee of the Privy Council of Canada on 17th December, 1898, and that if this recommendation be approved a copy of it should be transmitted to the Secretary of State for Canada for the information of His Excellency's Government.

F. CARTER-COTTON,

Minister of Finance and Agriculture.

Dated this 13th day of February, A.D. 1899.

The Rt. Hon. J. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 23rd March, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 40, of the 27th February, forwarding copy of a letter from the Japanese Consul at Vancouver, in which he calls attention to certain measures which have been introduced into the Legislative Assembly of British Columbia during its present session prohibiting the employment of Japanese and renewing with regard to these measures the objections which he urged against the legislation of the same nature passed by the Legislature of that province last year.

2. Her Majesty's Government must regret to find the Government and Legislature of British Columbia adopting a course which is justly regarded as offensive by a friendly power, and they hope that your Ministers will be able to arrange for the cancellation of the objectionable provisions and the substitution of a measure which, while it will secure the desired exclusion of undesirable immigrants, will obtain that result by means of some such general test as that already suggested in my despatch No. 214 of the 20th July, 1898. In any case, Her Majesty's Government strongly deprecate the passing of exceptional legislation affecting Japanese already in the province.

I have, &c.,

J. CHAMBERLAIN.

The Rt. Hon. J. Chamberlain to His Excellency the Governor General.

DOWNING STREET, 19th April, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 54, of the 16th March, forwarding copy of an approved minute of the Dominion Privy Council, to which is appended an approved report of the Executive Council of British Columbia, expressing the concurrence of the Government of that province in a report drawn up by the Minister of Finance and Agriculture on the subject of the Acts passed by the Provincial Legislature in 1898 containing provisions prohibiting the employment of Japanese on certain works.

2. The Provincial Government represent that these provisions are required by the economic conditions of British Columbia, and they regret their inability to introduce legislation for their repeal.

3. Her Majesty's Government fully appreciate the motives which have induced the Government and Legislature of British Columbia to pass the legislation under consideration, and recognize the importance of guarding against the possibility of white labour in the province being swamped by the wholesale immigration of persons of Asiatic origin. They desire also to acknowledge the friendly spirit in which the representations they have felt compelled to make have been received by the Government of British Columbia, and regret that after carefully considering the minute of the Executive Council they feel unable to withdraw the objections they have urged to the legislation in question.

4. There is no difference between Her Majesty's Government and the Government of British Columbia as regards the object aimed at by these laws, namely, to ensure that the Pacific province of the Dominion shall be occupied by a large and thoroughly British population rather than by one in which the number of aliens largely predominates, and many of the distinctive features of a settled British community are lacking.

5. The ground of the objection entertained by Her Majesty's Government is that the method employed by the British Columbia Legislature for securing this object, while admittedly only partial and ineffective, is such as to give legitimate offence to a power with which Her Majesty is, and earnestly desires to remain, on friendly terms. It is not the practical exclusion of Japanese to which the Government of the Mikado objects, but their exclusion *nominatim*, which specifically stamps the whole nation as undesirable persons.

6. The exclusion of Japanese subjects either from the province or from employment on public or quasi public works in the province by the operation of an educational test, such as embodied in the Natal Immigration Law, is not a measure to which the Government of Japan can take exception. If the particular test in that law is not regarded as sufficient, there is no reason why a more stringent and effective one of a similar character should not be adopted, so long as the disqualification is not based specifically on distinction of race or colour.

7. Any attempt to restrict immigration or to impose disqualifications on such distinctions, besides being offensive to friendly powers is contrary to the general principles of equality which have been the guiding principle of British rule throughout the Empire; and, as your Ministers are aware, Her Majesty's Government were unable to allow the Immigration Restriction Laws passed by some of the Australasian colonies in 1896 to come into operation for the same reasons as they are now urging against these laws in British Columbia.

8. Her Majesty's Government earnestly trust that on consideration of these explanations the Government of British Columbia will at once procure the repeal of the provisions complained of and the substitution of legislation on the lines indicated above.

9. If this is impossible, Her Majesty's Government feel compelled, however reluctant they may be to cause inconvenience to the province, to press upon your Ministers the importance in the general interest of the Empire of using the powers vested in them by the British North America Act, for cancelling these measures to which Her Majesty's Government object on grounds both of principle and policy.

I have, &c.,

J. CHAMBERLAIN,

(Approved 5 June, 1899.)

DEPARTMENT OF JUSTICE, OTTAWA, 29th May, 1899.

To His Excellency the Governor General in Council:

The undersigned, referring to his report respecting the statutes of the Province of British Columbia of 1898, dated the 8th of November last, which was approved

by Your Excellency in Council on 17th December, has the honour to state that as to chapter 49: "An Act respecting the Canadian Pacific Navigation Company, Limited," the undersigned has been informed that the Provincial Legislature at its last session pursuant to the recommendation of the said report, passed an amendment* removing the grounds of objection to which the undersigned called attention, and that the Act may, therefore, be left to its operation.

The Acts which are stated by the said report to be objectionable as affecting Japanese in British Columbia are chapters 10, 28, 30, 44, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64.

As to these statutes the recommendations of the said report have been carried into effect and Your Excellency's Government have communicated with Her Majesty's Government and with the Provincial Government.

The undersigned, by his report of 7th March last, which was approved by Your Excellency on the 13th March, submitted copy of the reply of the Provincial Government, and recommended that it be transmitted to the Right Honourable the Principal Secretary of State for the Colonies in order that he might submit any observations which he might deem proper for the consideration of Your Excellency's Government.

There has been referred to the undersigned copy of a despatch from Mr. Chamberlain to Your Excellency, dated 23rd March last, acknowledging the despatch of Your Excellency of the 27th February, No. 40, forwarding copy of a letter from the Japanese Consul at Vancouver in which he calls attention to certain measures which were introduced by the Legislature of British Columbia during the last session prohibiting the employment of Japanese, and renewing with regard to these measures the objections which he urged against the legislation now in question. It is stated in this despatch that Her Majesty's Government much regrets to find the Government and Legislature of the Province of British Columbia adopting a course which is justly regarded as offensive by a friendly power, and that Her Majesty's Government strongly deprecates the passing of exceptional legislation affecting Japanese already in British Columbia.

The undersigned has carefully considered the reasons stated in support of the legislation by the Government of British Columbia. He observes that the statutes in question have not rendered unlawful the employment of Japanese generally yet they have that effect so far as the companies incorporated by the Provincial Legislature and within the application of these statutes are concerned. Such legislation may operate to diminish Chinese and Japanese immigration into the province, which, as appears by the statement of the Provincial Government, is the main object, or if, as is to be inferred from the provincial despatch, the conditions are such as to induce employers to prefer Asiatic labour, the result might be such as to cause employers to carry on their business as individuals or partnerships rather than as corporations under the laws of the province. The undersigned does not consider, however, that the reasons urged on behalf of the province, or any other reasons which occur to him, are such as to justify Your Excellency's Government in approving of the legislation, in view of the strong objections urged against it by the Government of Japan, which objections have been so far upheld by Her Majesty's Government, as the correspondence upon the subject shows. The advantages to be derived by the Province of British Columbia from these enactments are, in the opinion of the undersigned, very doubtful, and not at all corresponding in importance to the advantages which may be expected both for the province and the Dominion at large from a friendly sentiment on the part of Japan in matters of commerce and otherwise. When it is considered further that these enactments may affect not only the relations between the Dominion and Japan, but also the relations of the Empire with the latter country, as Her Majesty's Government seem to apprehend they may do the duty of Your Excellency's Government

* Amended by 62 Vict., chap. 12, B.C. Statutes, 1899

to provide a remedy so far as the circumstances fairly permit, becomes apparent.

It is pertinent here to remark also that the authority of a province to legislate in relation to immigration in the province is, by the British North America Act, made subordinate to the authority of Parliament, and as these Acts are upheld largely as affecting immigration, the case seems to be one in which it is intended that Dominion policy should prevail.

The power of the Legislature to enact these statutes is not by any means free from doubt, because they principally affect the rights of aliens, and the subject of aliens is not within provincial authority. It is not, however, in view of the foregoing considerations, necessary at present to determine the question of *ultra vires*.

The undersigned observes that chapter 28, to which the short title is given of "*The Labour Regulation Act, 1898*," is confined in its provisions to the employment, in British Columbia, of Chinese or Japanese, and chapter 44, entitled the *Tramway Incorporation Amendment Act, 1898*. These Acts may, therefore, be disallowed without serious inconvenience. The other statutes mentioned in the report of the undersigned, of 8th November last, are mainly concerned with the incorporation of companies, and they came into effect upwards of a year ago. In these cases, or some of them, doubtless, companies have been organized and property acquired, debts and obligations incurred and business transacted, on account of which great inconvenience, confusion and loss would result if the Acts upon which these companies depend were now disallowed. The corporations themselves and the persons who have dealt with them cannot properly be held responsible for the objectionable provision in the constituting Acts, because this section seems to have been introduced in pursuance of a policy of the Government to disqualify Chinese and Japanese from employment by provincial corporations. The effect of such a provision also, being confined to a few corporations, is comparatively limited. The undersigned, therefore, considers that the justice of the case will be met by disallowing the General Act, namely chapter 28, cited as "*The Labour Regulation Act*," and also chapter 44 entitled "*The Tramway Incorporation Amendment Act, 1898*;" and on account of the inconvenience, confusion and loss which would otherwise ensue, leaving the other statutes to their operation, with an earnest recommendation to the Provincial Government based upon the reasons stated in this report that at the next ensuing session of the Legislature they introduce legislation in each case to repeal the clause in question.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his Government.

Respectfully submitted,

D. MILLS,

Minister of Justice.

Chapters 28 and 44 were accordingly disallowed on the 5th day of June, 1899.

NOTE.—Mr. Chamberlain's despatch of 19th April, 1899, had not been referred to the Minister of Justice and was not before him when the foregoing Report of 29th May, 1899, was written.

(Approved 2 May, 1899.)

DEPARTMENT OF JUSTICE, OTTAWA, 18th April, 1899.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a despatch to Your Excellency from the British Ambassador at Washington, inclosing copy of a note received by him from the office of the Secretary of State, inclosing copy of a petition to the President of the United States, from the United States citizens, resident in the Atlin district of British Columbia, representing the hardships to their interests of recent mining legislation of that province.

The undersigned has the honour to report that the British Columbia statutes of the last session have not yet been received at his department, and he is not at present in a position to express an opinion upon the merits of the application set forth in the petition. He recommends, however, that a copy of the documents above mentioned be transmitted to the Lieutenant Governor of British Columbia for his observations, with a view to further consideration of the matter by Your Excellency's government, and also that the British Ambassador at Washington be informed that this course has in the meantime been taken.

Respectfully submitted,

DAVID MILLS,

*Minister of Justice.**Sir Julian Paunceforte to Lord Minto.*

WASHINGTON, 7th April, 1899.

MY LORD,—I have the honour to transmit, herewith, to Your Lordship copy of a note which I have received from the United States Secretary of State inclosing copy of a petition to the President from the United States citizens resident in the Atlin district of British Columbia, representing the hardship to their interests of recent mining legislation of that province.

Mr. Hay suggests that the petition be submitted to the Dominion government without thereby raising any issue as to the general effect of the legislation in question.

A copy of the note and petition have been forwarded to Her Majesty's principal Secretary of State for Foreign Affairs.

I have, &c.,

JULIAN PAUNCEFOTE.

The U.S. Secretary of State to the British Ambassador.

DEPARTMENT OF STATE, WASHINGTON, 3rd April, 1899.

EXCELLENCY,—I take the liberty to inclose herewith a copy of a letter of the Commissioner of the General Land Office of the United States and its accompanying paper, which is a petition to the President of the United States by citizens of the United States resident in the Atlin district of British Columbia engaged in mining.

It will be seen that the petitioners complain that the recent Act of the assembly of the province of British Columbia as to mining, works upon them great hardship and injustice.

I have thought the petition was of such a nature that you might deem it well, without thereby raising any issue as to the general effect of the Act in question, to submit the representations of the petitioners to the government of the Dominion of Canada, in the hope that it might see such equities in their claims as to find a means of affording them some relief.

I have, &c.,

JOHN HAY.

The U.S. Commissioner of the Interior to the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,

WASHINGTON, D.C., 15th March, 1899.

SIR,—I have the honour to acknowledge the receipt of your reference of a petition signed by J. C. Wilber and four other citizens, who represent that they are a committee representing five hundred American citizens now residing at Atlin city, in British Columbia.

Your endorsement upon said petition is to the effect that this office should take such action as might be deemed proper in the premises.

Upon a careful examination of said petition, I am convinced that the statements therein contained are true and that they are not exaggerated.

I am impressed that said petitioners present a case of such merit as to warrant action by this government in their behalf.

These petitioners represent that they went to British Columbia long before the enactment of the local law, dated 18th January, 1899, and complied, in good faith with every provision of the then existing law, relative to mining rights and privileges, but that it was impossible to have their claims duly recorded and thus maintain their interests, because of the failure of the local government to provide the necessary facilities for recording such claims.

Accepting the petitioners' statements as being true, it would seem that they possess material and valuable equities, which, if urged by the proper officials of this government, the government of British Columbia might be induced to respect and protect.

I am unable to see that it is possible for this office to take any definite action having in view the relief of said petitioners.

Upon our fully considering this matter, I have deemed it proper to return said petition with recommendation that the attention of the Honourable Secretary of State be invited thereto.

Very respectfully,

BINGER HERMANN,

Commissioner.

Petition of Residents of Atlin City, B.C., to the President of the United States.

ATLIN CITY, B.C., 10th February, 1899.

HONOURABLE SIR,—Your petitioners would respectfully represent to your consideration the following facts for such action as may seem just and proper, and for such aid in securing to the citizens of the United States now residing in Atlin mining district, their property and vested rights.

First.—Your petitioners represent some five hundred citizens of the United States now residing in the Atlin gold fields of British Columbia, who have become “free miners,” by invitation of the government of Great Britain, as embraced in the statutes of British Columbia, a province of the Dominion of Canada, which enactments were made by Her Britannic Majesty Queen Victoria, by and with the advice and consent of the legislative assembly of the province of British Columbia, which enacts as follows:—

EXTRACT OF LAWS

“Every person over but not under eighteen years of age, and every joint stock company, shall be entitled to all the rights and privileges of a ‘free miner’ upon taking on a ‘free miner’s’ certificate.

“A ‘free miner’s’ certificate may be granted for one or more years, to run from the date thereof, or from the expiration of the applicants’ then existing certificate upon the payment therefor of the fees set out in the schedule of fees to this Act.

“If any person or joint stock company shall apply for a ‘free miner’s’ certificate at the mining recorder’s office during his absence, and shall leave the fees required by this Act with the officer or other person in charge of the said office, he or it shall be entitled to have such certificate from the date of such application.

“And any ‘free miner’ shall at any time be entitled to a ‘free miner’s’ certificate, commencing to run from the expiration of his then existing ‘free miner’s’ certificate, provided that when he applies for such certificate, he shall produce to the mining recorder, or in case of his absence, shall leave with the officer or other person in charge of the mining recorder’s office, such existing certificate.

“Every ‘free miner’ shall during the continuance of his certificate, but no longer, have the right to enter, locate, prospect and mine for gold and other precious metal upon any lands in the province of British Columbia, whether vested in the Crown or otherwise, except government reservations for town sites, land occupied by any building, and any land falling within the curtilage of any dwelling house, and any orchard, and any land lawfully occupied for placer mining purposes, and also Indian reservations.

“Every ‘free miner’ shall be entitled to locate and record a placer claim on each separate creek, ravine or hill, but no more than two claims in the same locality, only one of which shall be a creek claim. He shall be allowed to hold any number of claims (placer) by purchase; any ‘free miner’ may sell, mortgage or dispose of his claims or any interest therein.”

Second.—Your petitioners would further respectfully represent that, reposing trust and confidence in Her Majesty the Queen of Great Britain, and believing that Her Majesty’s government was acting in good faith, and desiring her mines to be developed, and would in common amity and fairness extend a welcome to energetic and law-abiding citizens of the United States, and in good faith execute and carry out the provisions of her said enactments thus advertised to the world, have expended large sums of money and performed great and arduous labours many times at the risk of life and health, and suffered much from hardships and exposure in coming to this remote and inhospitable country in order to secure these privileges.

Third.—Your petitioners would further respectfully represent that Her Majesty has, by and with the advice and consent of the legislature of British Columbia, repealed certain provisions of the Placer Mining Act hereinbefore recited (under which citizens of the United States have become “free miners”) by an Act of said legislature, bearing date 18th January, A.D., 1899, thus abrogating and annulling nearly all the vested rights secured to the citizens of the United States who became “free miners” under said Acts, prospected and located claims; only allowing them to work claims that are placed on record before 18th January, A.D. 1899.

Fourth.—Your petitioners would further respectfully represent that the mining season closed 15th September last, since which time no recorder's office has been kept here, and no recorder has been accessible to the miners of Atlin district; and much of the time prior to 15th September last, either there was no recorder in this locality, or he was not furnished with the necessary blanks and books of record and could not record claims; and in consequence, a large portion of the claims which have been prospected and located, could not be recorded owing to absence or inability of recorder to make the record; and now the rights of the citizens of the United States are annulled, and a record of said claims refused, although they hold a "free miner's certificate," and are entitled to the fruits of their labour under the provisions of the law which constituted them "free miners," and after expending much time, labour and capital in prospecting for and locating said claims.

Fifth.—Your petitioners would further respectfully represent that when they accepted Her Majesty's invitation, as evidenced by said enactment, and came into this country at great expense and hardship, and took out and paid for a "free miner's certificate" for one or more years, with a right of renewal as provided for by said Placer Mining Act, they acquired a vested right as such "free miner" which secured to them the right to prospect for, locate and have recorded, and work one or more claims, (placer) in accordance with the provisions of said Acts then in force, as long as their then existing "free miner's certificate" shall run, with the further right to have said "free miner's certificate" renewed from time to time so long as they complied with the existing Placer Mining Acts in force at that time.

Sixth.—Your petitioners would further respectfully represent that all the capital, labour and knowledge has been rendered valueless, not by any laxness of theirs, but in consequence of Her Majesty's government refusing to recognize the rights and privileges accorded to them under the laws in force when they took out their "free miner's certificate"; and when said government failed to provide a recorder with proper books and instructions to make record of claims; and when said government refused to acknowledge the validity of said "free miner's certificate" with all the rights and privileges guaranteed to them by the laws of Her Majesty's government; and when said government refuses to record claims prospected and located under the provisions of said enactments, when said claims are prospected and located by a citizen of the United States as "free miner" in good standing under the laws of Her Majesty's province of British Columbia.

Seventh.—Your petitioners would further respectfully represent that nearly all of the citizens of the United States now in the Atlin district who have taken out a "free miner's certificate," are miners of small means, that not only their rights as "free miners" to prospect and locate mining claims have been taken away, but also the right to earn their substance by labouring for British subjects is denied them, as they cannot secure a "free miner's certificate," except to work out mining claims they had secured and recorded prior to 18th January, 1899, the date of said amended Act.

Eighth.—Your petitioners would further respectfully represent that in consequence of the said recent enactments by Her Majesty's province of British Columbia, excluding citizens of the United States and other aliens from the Atlin mines, the business of the country has been prostrated and the property of the citizens of the United States has become almost valueless; all improvements in Atlin city and other places have been suspended, and large numbers of people are leaving the country; that a large majority of the miners and business men of Atlin district are citizens of the United States; that four-fifths of the claims prospected and located belong to said citizens of the United States, while extensive improvements have by them been commenced in Atlin city and other places, and that in consequence of said exclusion enactments, no one feels secure in his rights and interests, and no one is disposed to risk capital and labour in the development of the country: and that hydraulic mining and other extensive works requiring large expenditures of capital and labour will be

abandoned, or cease to engage the attention of capitalists and miners, on account of the insecurity of the rights of property, and scarcity of labour, owing to the discrimination against aliens; thus causing the tide of emigration to be diverted to other localities where laws are more liberal and the vested rights more sacred.

Ninth.—Your petitioners would further respectfully represent that in consequence of the recent enactments of Her Majesty through the legislative assembly of British Columbia, depriving the citizens of the United States of their vested rights which were guaranteed to them when they took out “free miner’s certificates” and prospected and located mining claims, the citizens of the United States in this district alone have been damaged to the extent of many millions; and unless they are relieved from this unjust legislation, many of them will be compelled to ask assistance from their government to remove to other sections, where the rights of labour and property are better protected and respected.

Now your petitioners would respectfully ask and pray that in behalf of the citizens of the United States now in Atlin mining district who have taken out a “free miner’s certificate,” that you bring to the notice of Her Majesty’s government of Great Britain the foregoing facts, and ask that the vested rights of the citizens of the United States who became “free miners” under Her Majesty’s enactments, be respected and secured, and that the amended Placer Mining Act of the province of British Columbia, passed the 18th day of January, A.D. 1899, if not repealed, be so modified as to give to the said citizens of the United States who emigrated to this country and took out a “free miner’s certificate,” all the rights and privileges accorded to them under the various enactments of Her said Majesty’s government in force at the time said miner’s certificate was issued.

Committee:

J. C. MILLER, N.Y. City,
A. HUGHES, N.Y. City,
J. Q. LEIGHTY, Frontin, Ohio,

W. H. FRENCH, California.
D. P. OGILVIE.

(EXTRACT.)

(Approved 16 August, 1899.)

DEPARTMENT OF JUSTICE, 2nd May, 1899.

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

The Committee of the Privy Council have had under consideration a despatch, hereto attached, dated 7th April, 1899, from Her Majesty’s Ambassador to the United States, transmitting a communication from the Secretary of State for the United States, inclosing a petition to the President of the United States from a number of its citizens resident in the Atlin district of British Columbia engaged in mining, representing that, having taken out free miner’s certificates under the laws of British Columbia, they proceeded to locate placer claims in the Atlin district; but before they were able to record their claims, an Act was passed by the legislature of British Columbia, entitled “An Act to amend the Placer Mining Act,” the effect of which it is alleged was to deprive the petitioners of the proprietary rights to any placer mines which, though staked, had not been recorded prior to the passing of the Act.

The Secretary of State to whom the matter was referred observes that the despatch from the British Ambassador with the inclosures from the Secretary of State at Washington, including a copy of the petition, was sent to the Lieutenant Governor of British Columbia, requesting him to obtain from his ministers an expression of their views on the complaints of the petitioners. An answer has now been received,

which in effect declares that the statements in the petition are very much exaggerated; that under the mining laws of the province no right can be acquired until the claim has been recorded, and that all recorded claims are exempted from the operation of the Act referred to.

The government of British Columbia recognizing, however, that possibly through lack of sufficient facilities for recording claims there may have been some instances where locatees were unable within a reasonable time to record their claims, introduced an amending Act in the same session, which was adopted, authorizing the appointment of a judge of the Supreme Court as a commissioner, with full power to settle all disputes in that district in accordance with equity and the spirit of the mining Acts, without being bound by the strict letter of the law. As the report of the judge has not yet been made public, it is impossible to say how wide a discretion he has exercised in considering claims of American miners actually located, but not recorded, prior to 18th January, 1899, the date of the passing of the Act amending the Placer Mining Act. If, however, any reliance can be placed on newspaper reports it would appear from the extracts hereto attached, taken from Victoria "Daily Times," of 12th July, 1899, that the judge was disposed to be influenced in his decisions by the equities of the case, rather than by the strict letter of the statute.

The public lands in British Columbia belong to the province, and the policy of granting or of withholding licenses to aliens, is under the exclusive control of its legislature, and it would be contrary to the spirit of the constitution to interfere with a provincial Act dealing with the disposition of its public lands.

For the past thirty years the mining laws of British Columbia have been of the most liberal character, and citizens of the United States have derived larger profits from the mines of that province than other nationalities.

It is no exaggeration to say that over seventy-five per cent of the mineral wealth of the Kootenay district in southern British Columbia has gone to enrich American citizens, and the first restrictive legislation introduced, is the Act referred to, relating to placer mines, and which seems to have been suggested by section 2319 of the Mineral Lands Act of the United States.

The contrast heretofore between the mining laws existing on the north side of the 49th parallel and the laws on the same subject that prevail on the south side of that parallel of latitude, has been so marked as to frequently evoke strong comments. Section 2319 of the revised statutes of the United States relating to mineral lands, reads as follows:—

"All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found, to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable, and not inconsistent with the laws of the United States."

The clause on the same subject in the British Columbia Act referred to, grants the rights and privileges of a British subject in taking up placer mining claims, also "to those who have declared their intention to become such." The similarity in the language of the two sections is noticeable.

The public lands in the Northwest and Yukon Territories belong to the federal authority, and American citizens have availed themselves of the liberal laws of the Dominion to acquire mineral lands and mining rights in the Yukon, in a greater proportion than any other nationality, and the reports of the gold dust now arriving at Seattle and other American ports confirm the impression that the citizens of the United States are receiving a larger share of the wealth of the Yukon than even Canadians.

It is no doubt true that section 13 of Chap. 299, approved on 14th May, 1898, reads as follows:—

"Section 13. That native born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the North-west Territory, by the laws of the Dominion of Canada or the local laws, rules and regulations; but no greater rights shall be thus accorded than citizens of the United States or persons who have declared their intention to become such, may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect."

Congress evinced a desire to extend to native born Canadians mining rights in Alaska similar to those enjoyed by American citizens in the Yukon Territory, but as the system in Canada is to grant mining licenses and the practice in the United States is to grant the land in fee, and as the dimensions of mining claims in the one country are not equal to the area in the other country, the officials in Alaska have taken advantage of the technical difference between the mining laws in Alaska and the British Yukon, to nullify section 13 referred to, the contention of American officials being that the Canadian law relating to the acquisition of mining rights must first conform to the American statutes, before native born Canadians can take up mining claims in Alaska.

The discrimination against British subjects on one side of the international boundary, compared with the absence of any discrimination against American citizens on the other side of the line has, no doubt, had its effect on public opinion in British Columbia, and has resulted in the passing of the Act to which objection is now taken.

The minister further observes that a like sentiment is growing in other parts of the Dominion, and it will be a cause for great regret if that feeling becomes so general as to force the parliament of Canada to adopt mining laws similar in their discriminating character to those that have been passed by Congress at Washington.

The committee advise that Your Excellency be moved to transmit a certified copy of this minute, and of the report of the government of British Columbia, to His Majesty's Embassy at Washington for communication to the Honourable the Secretary of State at Washington.

All which is respectfully submitted to Your Excellency's approval.

JOHN J. MCGEE,

Clerk of the Privy Council.

Copy of a Report of the Hon. the Provincial Secretary, approved by the Lieut. Governor in Council, 7 June, 1899, and transmitted to the Governor General by the Lieutenant Governor on 8 June, 1899.

To His Honour the Lieutenant Governor in Council:

The undersigned has had before him for consideration a communication from the Lieutenant Governor, dated the 12th ultimo, wherewith is transmitted a copy of a petition addressed to the President of the United States, by certain residents of Atlin, complaining of recent mining legislation of this province, as therein set forth.

The undersigned has the honour to report as follows in regard to said petition:—

The petition states that four-fifths of the claims prospected and located belong to citizens of the United States; thus, according to the petition itself there is only one-fifth left for other aliens and our own citizens. This statement is probably like the other statements in the petition, greatly exaggerated, but there is sufficient truth in it to justify (if this proportion between aliens and citizens should be maintained), the stand which the legislature took to carry out their avowed policy, the reservation of the provincial placer mines for British subjects.

The question whether such policy was in the true interest of the province is one for the legislature and the legislature alone, and the unanimity with which that body endorsed this policy is sufficient to show that the government and the legislature were

in complete accord in the matter. There is no attempt to discriminate between the native born and the naturalized citizen, nor to throw any difficulty whatever in the way of an alien desiring to become naturalized; all that is done is to say, our placer mines are reserved for those who are prepared to acknowledge their obligations as citizens of the British Empire.

Taking up the complaints in the petition *seriatim* we would say any rights acquired by the petitioners have been preserved to them. The legislation complained of specifically exempts all claims recorded prior to its passage and provides for the unimpeded working of such claims by the holders, although aliens. A reference to the mining laws will show that their whole tenor is, as it necessarily must be, that no right is acquired until a claim is recorded. As already stated, all such rights are scrupulously respected. It may be well to note this, as a casual reader of the petition, unacquainted with the facts, might naturally suppose that such claims had been confiscated.

The government, with the sanction of the legislature, had an unquestioned right to reserve any lands they might think fit from the prospector and miner. They might have said the Crown retains in its own possession for the present, all mines and minerals the property of the Crown in the northern part of the province; and no one will be allowed to prospect for or appropriate minerals in that section. Such a course might have been taken with a view of working these claims by the Crown for its own direct benefit, or with the purpose of having these claims in reserve after the mining interests in the other parts of the province had been more fully developed.

Suppose such a course had been adopted, that all the miners had been excluded from the lands in question, the absurdity of the petitioners' claims would be seen at once, and the absurdity exists no less, although the reserve thus made has been relaxed so far as citizens are concerned. The grievance of the petitioners is really, not that they are shut out, but that others are admitted.

The fifth clause of the petition claims that the petitioners had acquired vested rights by taking out free miners' certificates, not only to the rights granted by such certificates at the time, but to renewal in perpetuity of such rights. To state this is to refute it; the Crown and the legislature in providing for the granting to free miners the right to prospect for and appropriate minerals, did not, and could not, divest themselves of the power to amend the terms and conditions of such certificates in any manner that might be deemed expedient. When recorded claims were exempted from the operation of the law, everything as already stated, had been done that the most extreme advocate of vested rights could justly claim.

The sixth clause of the petition complains of alleged losses to the petitioners through lack of sufficient facilities for recording claims. This to some extent may have been the case, but so far as it did exist, was caused by unavoidable circumstances, for which no responsibility attaches to the government.

So anxious have the government and legislature been to minimize, as much as possible, any hardship or injustice which may have been occasioned through the sudden rush into the northern country, following on the discovery of rich diggings there, that an Act was passed at the last session of the legislature providing for the appointment of a judge of the Supreme Court, as a commissioner with full power to settle all disputes in that country in accordance with equity and the spirit of the mining Acts, without being bound by the strict letter of the law.

The grievance complained of in the seventh clause of the petition, that aliens cannot obtain work on claims held by citizens, has already been removed. By the legislation of last session the necessity of a labourer in a mine taking out a free miner's certificate is done away with.

The eighth clause of the petition alleges great injury to the interest of the country through the action of the law complained of. This, however, is purely a matter for the legislature to judge of, and is of no concern to outsiders. The government do not consider the statement is true, nor that any present depreciation, even if such exists, is likely to be lasting.

The ninth clause of the petition alleges damage to citizens of the United States to the extent of many millions. This is only necessary to allude to as a good instance of the absurd misstatements and exaggerations of the whole of the document. As already repeatedly stated, the petitioners had acquired no rights which are in any way affected by the legislation complained of.

Dated this 6th day of June, A.D. 1899.

C. A. SEMLIN,
Provincial Secretary.

Mr. Chamberlain to Lord Minto.

DOWNING STREET, 18th September, 1899.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 180 of the 24th ultimo, inclosing copy of a despatch in which you forwarded to Her Majesty's Chargé d'Affaires at Washington, copy of an approved minute of the Dominion Privy Council, containing the observations of your ministers and of the government of British Columbia, upon the petition addressed to the President of the United States by certain United States citizens with regard to the hardship alleged to be caused to them by recent mining legislation of British Columbia.

2. Mr. Tower has been authorized by telegraph to communicate a copy of the minute to the United States government.

3. In the fourth paragraph of the minute your ministers state that 'the policy of granting or withholding licenses to aliens is under the exclusive control' of the provincial legislature. On this point I should be glad if you will refer them to my despatch No. 191 of the 16th ultimo, inclosing copies of the judgment delivered by the Judicial Committee of the Privy Council on the appeal of the Union Colliery Company of British Columbia *vs.* Bryden and the Attorney General for British Columbia. In that judgment it is laid down that section 91 (25) of the British North America Act invests the legislature of the Dominion government with exclusive authority in all matters which directly concern the rights, privileges and disabilities of aliens who are resident in the provinces of Canada. It would appear therefore that in passing the statute which gave rise to the petition, the legislature of the province acted *ultra vires*.

I have, &c.,

J. CHAMBERLAIN.

(Approved 14 December, 1899.)

DEPARTMENT OF JUSTICE, OTTAWA, 14th November, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of British Columbia, passed in the sixty-second year of Her Majesty's reign, 1899, and received by the Secretary of State for Canada on 27th April, and he is of opinion that these statutes may be left to their operation without comment with the exception of the following:—

Chapter 16. 'An Act to amend "The Constitution Act."'

Section 2 of this statute amends section 9 of chapter 47 of the revised statutes of British Columbia, 1897, by adding thereto a subsection to the effect that the section amended shall be deemed to include the power of commuting and remitting sentences for offences against the laws of the province, or offences over which the legislative authority of the province extends.

The undersigned considers that this Act may be left to its operation, but in this connection desires to call attention to the observations of Sir Oliver Mowat, when Minister of Justice, in his report of 16th October, 1896 (approved by His Excellency in Council on 13th November, 1896), upon chapter 1 of the statutes of Nova Scotia, 1896, which statute contained a provision substantially the same as that now under consideration.

Chapter 39. "An Act respecting Liquor Licenses."

By section 36 of this Act, it is provided that no license under this Act shall be issued or transferred to any person of the Indian, Chinese or Japanese race.

Chapter 44. "An Act to grant a subsidy to a railway from Midway to Pen-ticton."

Section 6 of this chapter provides that no Chinese or Japanese person shall be employed or permitted to work in the construction or operation of any railway subsidized under this Act, under a penalty.

Chapter 46. An Act to amend "The Coal Mines Regulation Act."

This Act amends chapter 136 of the revised statutes of British Columbia by inserting the word "Japanese" after the word "Chinaman" in the fourth and twelfth sections of the Act amended.

Chapter 78. An Act to incorporate "The Ashcroft Water, Electric and Improvement Company."

Chapter 79. An Act to incorporate "The Atlin Short Line Railway and Navigation Company."

Chapter 80. An Act to incorporate "The Atlin Southern Railway Company."

Chapter 81. An Act to incorporate "The Big Bend Transportation Company, Limited."

Chapter 83. An Act to incorporate "The Kamloops and Atlin Railway Company."

Chapter 84. An Act to amend "The Kitimaat Railway Act, 1898."

Chapter 85. An Act to amend "The Kootenay and North-west Railway Company's Act, 1898."

Chapter 86. An Act to amend "The North Star and Arrow Lake Railway Act, 1898."

Chapter 87. An Act to incorporate "The Pine Creek Flume Company, Limited."

Chapter 88. An Act to incorporate "The South Kootenay Railway Company."

Chapter 89. An Act to incorporate "The Vancouver, Northern and Yukon Railways Company."

Each of these statutes contain a provision in effect that Chinese or Japanese persons shall not be employed by the company

For the reasons stated in the correspondence which took place between Your Excellency's government and the government of British Columbia with regard to the statutes of that province for the year 1898, and in the orders of Your Excellency in Council with regard to the same, the undersigned considers it undesirable that these provisions affecting Japanese should be allowed to remain in operation. In view of the action taken by Your Excellency's government with respect to the statutes of 1898, containing similar clauses, and the reasons then influencing Your Excellency's government which still hold good, the undersigned entertains the hope that upon the attention of the government of British Columbia being drawn to the matter, that government will undertake to have these statutes amended by repealing the clauses referred to which affect Japanese.

The undersigned considers that the government of British Columbia should be asked to consider the matter and state whether these statutes will be amended as desired within the time limited for disallowance. In the meantime the undersigned withholds any further recommendation as to the statutes in question.

It may be proper to state that communications upon this subject have been received by Your Excellency's government, both from the Principal Secretary of State

for the Colonies, and from His Imperial Japanese Majesty's Consul at Vancouver. Copies of these are submitted herewith, and should, in the opinion of the undersigned, be forwarded as part of the despatch which the undersigned recommends should be sent to the provincial legislature.

Chapter 43. An Act to amend "The Master and Servant Act."

This statute enacts that any agreement or bargain which may be made between any person, and any person not a resident of British Columbia for the performance of labour or service, having reference to the performance of labour or service by such person in the province of British Columbia, and made previous to the migration or coming into British Columbia of such other person, whose labour or service is contracted for, shall be void and of no effect as against the person only, so migrating or coming.

There is a provision exempting skilled workmen from the operation of this section under certain circumstances.

The undersigned doubts the authority of a provincial legislature to enact a provision of this kind, because it seems directly to affect the regulations of trade.

The undersigned does not, however, on that account recommend the disallowance of the Act.

Chapter 50: 'An Act to amend the Placer Mining Act.'

There has been referred to the undersigned copy of a despatch from the British ambassador at Washington to Your Excellency, transmitting copy of a note received from the United States Secretary of State, inclosing copy of a petition to the President of the United States from the United States citizens resident in the Atlin district of British Columbia, representing the hardships to their interests of the legislation contained in this statute. The British ambassador states that Mr. Hay suggests that the petition be submitted to Your Excellency's government without thereby raising any issue as to the general effect of the legislation in question. Copy of the despatch with the inclosures referred to were formally submitted by the undersigned to Your Excellency, and Your Excellency on 2nd May last was pleased to approve the recommendation of the undersigned, advising that a copy of these papers should be sent to the Lieutenant Governor of British Columbia for his observations, with a view to further consideration of the matter by Your Excellency's government, and also that the British ambassador be informed of the course taken in the meantime. The communication so recommended was addressed to the Lieutenant Governor of British Columbia early in May last, as the undersigned is informed, but no reply has been received.

The undersigned at present recommends that the matter be called again to the attention of the Lieutenant Governor with a request for his reply at his early convenience.

The following chapters above mentioned are also subject to another objection, viz.:

Chapter 79. "An Act to incorporate the Atlin Short Line Railway and Navigation Company."

Chapter 80. "An Act to incorporate the Atlin Southern Railway Company."

Chapter 83. "An Act to incorporate the Kamloops and Atlin Railway Company."

Chapter 84. "An Act to amend the Kitimaat Railway Act, 1898."

Chapter 85. "An Act to amend the Kootenay and North-west Railway Company's Act, 1898."

Chapter 86. "An Act to amend the North Star and Arrow Lake Railway Act, 1898."

Chapter 88. "An Act to incorporate the South Kootenay Railway Company."

Chapter 89. "An Act to incorporate the Vancouver, Northern and Yukon Railway Company."

These are statutes incorporating railway companies, and each of them contains a provision that in case at any time the railway is declared by the parliament of Can-

ada to be a work for the general advantage of Canada, then all powers and privileges granted by the Act of incorporation of the company or by the British Columbia Railway Act, shall thereupon cease and determine.

The undersigned apprehends that there are cases in which the parliament of Canada may properly declare a railway, otherwise subject to the exclusive authority of a province, to be for the general advantage of Canada, and that when such declaration is properly made, it is intended by the constitution that the work shall cease to be within the legislative authority of the province, and shall fall within the exclusive jurisdiction of parliament. Such being the case it is, in the opinion of the undersigned, incompetent to a provincial legislature to provide as to what is to take place in the event of parliament exercising that constitutional authority, as the result of which the subject of legislation is withdrawn from provincial jurisdiction. These sections, though improper, are therefore harmless, and were it possible that they could have any effect, the whole matter would be within the authority of parliament, upon its declaring the work for the general advantage of Canada, so that parliament might re-enact or confirm in each case the very provisions which the legislature says are to cease and determine.

Chapter 82. "An Act to incorporate the Chartered Commercial Company of Vancouver."

Some of the objects of this company, as stated in section 2, appear to relate to the subject of banking rather than to any matter within the legislative authority of the province. The undersigned observes, however, that by section 17 it is enacted that nothing in this statute contained shall authorize, or be construed to authorize, the company to engage in banking, insurance, or the construction of railways. The limitation so introduced seems to render it unnecessary for the undersigned to consider the propriety of disallowing this Act, as he would otherwise feel called upon to do.

With the exception, therefore, of the statutes above mentioned affecting Japanese, and chapter 50 to amend the Placer Mining Act, the undersigned considers that these statutes may, for the reasons above stated, be left to their operation. As to the Acts so excepted, a further report may be necessary upon hearing from the provincial government.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his government, and that the Lieutenant Governor be urged to reply as speedily as possible to those portions of the report which are intended to call for reply.

Respectfully submitted,

DAVID MILLS,

Minister of Justice

His Honour the Lieutenant Governor of British Columbia to the Secretary of State.

GOVERNMENT HOUSE, VICTORIA, B.C., 27th December, 1899.

SIR,—I have the honour to acknowledge the receipt of your letter of the 20th instant, wherewith you transmit a certified copy of a minute of the Privy Council, dated the 14th instant, respecting the statutes passed by the legislative assembly of this province in the 62nd year of Her Majesty's reign, which are left to their operation with the exception of the statutes mentioned as affecting Japanese, and chapter 50, intituled "An Act to amend the Placer Mining Act," upon which you state that a further report may be necessary upon hearing from my government. In this connection would you be good enough to point out to the Hon. the Minister of Justice that he is in error when he states in his report on the said chapter 50, referring to a petition addressed by citizens of the United States resident in Atlin to the President of the

United States. "Copy of the despatch with the inclosures referred to were formally submitted by the undersigned to Your Excellency, and Your Excellency on 2nd May last, was pleased to approve the recommendation of the undersigned, advising that a copy of these papers should be sent to the Lieutenant Governor of British Columbia for his observations with a view to further consideration of the matter by Your Excellency's government, and also that the British ambassador be informed of the course taken in the meantime." The communication so recommended was addressed to the Lieutenant Governor of British Columbia early in May last, as the undersigned is informed, "but no reply has been received."

The communication referred to by the minister in the above report was dated 5th May last, acknowledged on the 12th idem, and transmitted the same day to the provincial secretary. On 7th June last I approved of a minute of my Executive Council embodying the views of my government in respect to the alleged grievances set forth in the said petition, and as to the scope of the legislation contained in the said chapter 50. And on the following day I transmitted to you a certified copy of the said minute, which was acknowledged by you on the 16th idem. I have urged upon my advisers to express their views as speedily as possible in regard to such portions of the minister's report as are intended to call for a reply.

I have, &c.,

THOMAS R. McINNES,

Lieutenant Governor.

Copy of Petition praying for the disallowance of Chap. 43, Statutes of British Columbia, 62 Vict.

To His Excellency the Governor General in Council:

The petition of the undersigned representatives of incorporated companies owning and operating metalliferous mines in the district of Kootenay in the province of British Columbia, humbly sheweth as follows:—

1. That the companies represented by the undersigned are either incorporated under the laws of British Columbia or under the laws of Great Britain, and in the latter cases are now registered and authorized to do business in the province of British Columbia.

2. That the capital of the companies represented by the undersigned aggregates many millions of dollars. That large sums of money have been invested by the said companies in the purchase of mineral claims in the district of Kootenay, British Columbia, and further large sums in the development of such properties and in the purchase and erection of machinery for the working of their respective mines.

3. That a large number of the mines owned by the companies represented by the undersigned have not been worked for some months past, the operation of the same having ceased owing to the unsettled and unsatisfactory state of the labour market, occasioned by the passing and enforcement of the legislation hereinafter complained of. And the expense of carrying on the work in the mines, that are at present being operated, is so great that the same has become burdensome and unremunerative.

4. That by section 4 of chapter 49 of the statutes of the province of British Columbia, 62 Victoria, entitled "An Act to amend the Inspection of Metalliferous Mines Act," it is provided as follows: "No person shall be employed under ground in any metalliferous mine for more than eight hours in every twenty-four hours." This enactment will be hereafter referred as the "Eight-hour law."

5. That prior to the enactment of the "eight-hour law" ten hours constituted a day's work for persons employed under ground in metalliferous mines in British Columbia.

6. That since the enactment of the "eight-hour law" miners have demanded the same rates of pay for eight hours' work as was previously paid them for ten hours' work.

7. That owing to the conditions of mining existing in that portion of the Kootenays, known as the "Slocan district," the owners of mines in that district could not afford to pay miners the same wages for eight hours as they had been paying for ten hours' work. The men who were working in the Slocan mines at the time of the enactment of the "eight-hour law" refused to continue work at a rate of wages proportionate to the reduction of the hours of labour, and being unable to procure other miners in the province, the managers of the said mines had the alternative of working the said mines at a loss or of closing the same down, and accordingly they chose the latter course.

8. That being unable to get workmen in British Columbia in sufficient numbers to fill the places of the men who had refused to accept such reduced wages, efforts were made by mine managers to procure labour in eastern Canada where, your petitioners are informed and have every reason to believe, the services of skilled and experienced miners can be procured. It was found impossible, however, to make contracts with or bring miners into British Columbia from eastern Canada owing to the provisions of "The Master and Servant Amendment Act, 1899," being chapter 43 of the statutes of British Columbia, 62 Victoria. Section 3 of said Act provides as follows:

"3. Any agreement or bargain, verbal or written, express or implied, which may be made between any person and any other person not a resident of British Columbia, for the performance of labour or service, or having reference to the performance of labour or service, by such other person in the province of British Columbia, and made as aforesaid, previous to the migration or coming into British Columbia of such other person whose labour or service is contracted for, shall be void and of no effect as against the person only so migrating or coming.

"(a) Nothing in this section shall be construed as to prevent any person from engaging, under contract or agreement, skilled workmen, not resident in British Columbia, to perform labour in British Columbia in or upon any new industry not at present established in British Columbia, or any industry at present established, if skilled labour for the purpose of the industry cannot be otherwise obtained, nor shall the provisions of this section apply to teachers, professional actors, artists, lecturers or singers."

9. That the present condition of mining in British Columbia does not, for economic reasons, justify the payment of the rate of wages now demanded by miners in British Columbia. Being prevented by the provisions of section 3 of chapter 43, quoted in the last paragraph, from making agreements or bargains with workmen in eastern Canada for the performance of labour or service in British Columbia and being prohibited by the provisions of chapter 2, 60-61 Vic., of the statutes of Canada, "An Act to restrict the importation and employment of Aliens" from securing the immigration of miners from the United States of America under contract or agreement to perform labour or service in British Columbia, the companies represented by your petitioners are practically debarred from any relief in the premises.

10. That as the several companies represented by your petitioners are carrying on the business of mining in British Columbia under the sanction of law, they submit that they are entitled to exercise the rights of contract enjoyed by British subjects throughout the other portions of Canada. That if they desire so to do they are entitled, as of right, to go into any province of the Dominion of Canada and enter into and make agreements or bargains, verbal or written, express or implied, with any person who is a resident of Canada for the performance of labour or service in British Columbia, any law in force in British Columbia to the contrary notwithstanding.

Your petitioners therefore pray that Your Excellency in Council will be pleased to disallow chapter 43 of the statutes of the province of British Columbia, passed in the session held in the 62nd year of the reign of Her Majesty Queen Victoria, being the first session of the 8th parliament of British Columbia, upon the following amongst other grounds:—

1. That the provisions of section 3 of the said Act are unconstitutional, inasmuch as they deprive Her Majesty's subjects, resident in British Columbia, of the right of contracting with persons resident in the other portions of the Dominion of Canada for the performance of labour in British Columbia.

2. That the enactment complained against is *ultra vires* of the legislature of British Columbia.

Old Ironsides Mining Company, Limited.

Knob Hill Gold Mining Company, Limited.

The Granby Con. M. & S. Company, Limited.

Montreal Boundary Creek Mining Company, Limited.

The British Columbia Copper Company, Limited.

The No. 7 Mining Company, Limited.

Morrison Gold Mining Company.

Western Copper Company, Limited.

The Boundary Creek Mining and Milling Company.

Royal Victoria Gold Mining Company.

The Buckhorn Gold and Copper Company, Limited.

The Golconda Mines, Limited.

War Eagle Copper Gold Mining Company, Limited.

City of Paris Gold Mining Company, Limited.

Majestic Gold Mining Company, Limited.

The Pathfinder Mining Reduction and Investment Company, Limited.

Copy of Petition praying for the disallowance 62 Vict. (B.C.) Chap. 49.

To His Excellency the Governor General in Council:

The petition of the undersigned representatives of incorporated companies owning and operating metalliferous mines in the districts of Kootenay and Yale in the province of British Columbia, sheweth as follows:—

1. That the companies represented by the undersigned are either incorporated under the laws of British Columbia or under the laws of Great Britain or the United States of America, and in the latter cases are now registered and authorized to do business in the province of British Columbia.

2. That the capital of the companies represented by the undersigned aggregates many millions of dollars. That large sums of money have been invested by the said companies in the purchase of mineral claims in the districts of Kootenay and Yale, British Columbia, and further large sums in the development of such properties, and in the purchase and erection of machinery for the working of their respective mines.

3. That at the first session of the eighth parliament of British Columbia, an Act was passed entitled "An Act to amend the Inspection of Metalliferous Mines Act," being chapter 49, 62 Victoria, the said Act being assented to by His Honour the Lieutenant Governor on the 27th day of February 1899.

4. That by section 4 of the said Act it is enacted that "section 13 of said chapter 134 is hereby repealed and the following substituted therefor: 13. 'No person shall be employed under ground in any metalliferous mines for more than eight hours in every twenty-four hours.'"

5. That the enforcement of the provisions of said section 4 has seriously and most materially interfered with, and injuriously affected the business of metalliferous

mining in British Columbia, and the said business cannot now be carried on successfully and economically in the said province.

6. That by the operation of the said law the rights of contract always enjoyed by the owners of metalliferous mines, and persons employed underground in the same in British Columbia, have been interfered with and restricted to the injury of all concerned.

Your petitioners therefore pray that Your Excellency in Council will be pleased to disallow the said Act, chapter 49 of the statutes of British Columbia, passed in the session held in the sixty-second year of the reign of Her Majesty Queen Victoria, being the first session of the eighth parliament of British Columbia, upon the ground that the provisions of section 4 of the said Act are unconstitutional, for the following amongst other reasons:—

(a) That by the operation of the said law both the owners of metalliferous mines and persons employed underground in the same, are denied the right to contract, as they have hitherto done under the law, and as others are still allowed to do by the law. The class of persons thus affected are deprived of both liberty and property to the extent to which they are thus deprived of the right of contract. The privilege of contracting is both a liberty and property right. Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts.

(b) The law complained against is an undue interference with the fundamental rights of personal security, personal liberty and rights of property. The right to contract is the only way by which a person can rightfully acquire property by his own labour. The legislature of British Columbia has, therefore, no right to deprive one class of persons, such as persons working underground in metalliferous mines, of the privilege allowed to other persons under like conditions in coal and other mines in the province of British Columbia.

(c) The law complained against is an arbitrary restriction upon the fundamental rights of a citizen to control his own time and faculties. It is unreasonable and operates upon one class of individuals; it is partial, and unjustly discriminates against one class of employers and employed, inasmuch as persons working underground in coal or other mines in British Columbia are not subjected to the same restrictions.

(d) The law complained against has imposed an unreasonable and unnecessary burden upon owners of metalliferous mines in British Columbia, inasmuch as such owners had purchased their respective properties prior to the passing of the said law, and invested large sums of money in the developement of the same, on the faith and in the belief that they would be allowed to operate the said mines under the laws and conditions operating and existing at the time of such investments being made.

(e) That the law complained against has deprived the owners of metalliferous mines, and persons employed underground in the same, of vested rights, namely, the rights of the subject, inasmuch as it prevents persons legally competent to enter into contracts throughout the realm.

(f) That the law complained against is an unjustifiable interference with the rights of the subject inasmuch as it prevents persons legally competent to enter into contracts, from making their own contracts.

(g) That there is no law in force in British Columbia prohibiting the employment of competent persons underground in metalliferous mines, and such employment is, therefore, not illegal, nor against public policy, nor unfit for competent persons, and in consequence any law restricting the right of contract respecting such employment, is unjust discrimination against and interference with the rights of persons who desire to work underground in metalliferous mines.

(h) That the law complained against violates and infringes both the right to enjoy liberty, and to acquire and possess property, and to contract respecting the same. The right to acquire, possess and protect property includes the right to make reasonable contracts respecting the same.

And your petitioners as in duty bound will ever pray.

	Capital Invested.
The Hall Mines, Limited	\$1,447,752.97
Duncan Mines, Limited	
Granite Gold Mines, Limited	500,000.00
Queen Bess Proprietary Co., Ltd.	160,000.00
Molly Gibson Mining Co., Ltd.	200,000.00
The Fern Gold Mining and Milling Co., Ltd.	288,882.54
Athabasca Gold Mine, Ltd.	200 000.00
Exchequer Gold Mining Co., Ltd.	1,000,000.00

The London and British Columbia Goldfields, Limited.	Figures as to actual capital ex- penditures were given in evidence by J. R. Robertson, general manager for these companies, before Com- missioner R. C. Clute, Q.C., in Nelson. Mr. Robertson is just at present out of town and figures unavailable. SAMUEL S. LAMBE. 15th January, 1900.
The Ymir Gold Mines, Limited.	
The Enterprise (British Columbia) Mines, Limited.	
The Silver Lead Mines of British Columbia, per Clarence J. Smith, secretary.	

Copy of a Report of the Hon. the Attorney General of British Columbia, approved by the Lieutenant Governor in Council 8 February, 1900, and transmitted on 9 February, 1900, to the Secretary of State by the Lieutenant Governor

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to report that he has had under consideration the communication of the Under Secretary of State, dated the 20th December, 1899, transmitting a minute of the Privy Council, dated the 14th December, 1899, respecting the statutes passed by the legislative assembly of the province of British Columbia in the 62nd year of Her Majesty's reign.

The undersigned begs respectfully to call attention to a minute of the Executive Council of British Columbia, approved on the 14th day of February, 1899, and to urge upon the consideration of His Excellency's advisers the following extracts from the said last mentioned minute:—

"All that is sought to be attained by the legislation in question is, that Chinese or Japanese persons shall not be allowed to find employment on works, the construction of which has been authorized or made possible of accomplishment, by the granting of certain privileges or franchises by the legislature.

"It will, therefore, be seen that the restrictive provisions are merely in the nature of a condition in agreements or contracts, between the provincial government and particular individuals or companies, whereby certain privileges, franchises, concessions and in some cases also, subsidies and guarantees are granted to such individuals or companies, in consideration of only white labour being employed in the works which are the subject matter of such agreements.

"The same causes which have led the legislatures of Natal and the Australian colonies to take measures to restrict the influx of large numbers of labouring people from Asia, exist in British Columbia. They are indeed more potent here, on account

of the shorter distance intervening between China and Japan and this province, as compared with that between those countries and Australia or Natal.

"It may also be pointed out in this connection that the possibility of great disturbance to the economic conditions existing here, and of grave injury being caused to the working classes of this country, by a large influx of labourers from Japan, was so apparent that the government of Canada decided it was not advisable that the Dominion should participate in the revised treaty between Great Britain and Japan, whereby equal privileges were granted to the people of each nation in the country of the other.

"The economic conditions in British Columbia and Japan, and the standards of living of the masses of the people in the two countries differ so widely, that to grant freedom of employment on such public works as are authorized to be carried out by the Acts of the legislature, would almost certainly result in all such employment being monopolized by the Japanese, to the exclusion of the people of this province.

"Therefore, while the legislature has scrupulously abstained from any interference with the employment of Japanese by private individuals or companies, and has not sought to put any restriction on their engaging in any ordinary occupation or business, it has deemed it to be in the interests of the province to prohibit their employment on works or undertakings for which it has granted privileges or franchises.

"That such restrictions are not only judicious, but necessary, has been shown by the manner in which cheap Asiatic labour has in many cases supplanted white labour, on works to which no such restrictions as those referred to were attached.

"While it would be a matter of profound regret if any action of the government or legislature of this province should cause Her Majesty's government any embarrassment, or impair its friendly relations with another power, it may be pointed out that there are other considerations of an Imperial character involved in this matter.

"It is unquestionably in the interests of the Empire that the Pacific province of the Dominion should be occupied by a large and thoroughly British population, rather than by one in which the number of aliens largely predominated, and many of the distinctive features of a settled British community were lacking.

"The former condition could not be secured were the masses of the people subjected to competition which would render it impossible for them to maintain a fair and reasonable standard of living.

"For many years the evil effects of unrestricted Chinese immigration caused great agitation in British Columbia, and the imposition of the capita-tion tax of \$50 was the consequence.

"Since then, greater facilities of communication with Japan, and the opportunities for employment in British Columbia arising from the development of its forests, mineral and fishery resources have led to an influx of Japanese which has materially and injuriously interfered with white labour, and has caused the legislature to pass the statutes now under consideration.

"There is no reason to believe that this influx of Japanese is likely to diminish. On the contrary, there are many indications that it will become larger, and that Japanese labour will, if some restrictive measures are not adopted, entirely supplant white labour in many important industries, and be used almost exclusively on works carried out under franchises granted by the legislature, and which are in many cases aided by subsidies from the provincial treasury, largely with the object of opening up the province and inducing an immigration of desirable settlers.

"The undersigned therefore recommends that a reply be made to the government of the Dominion, that His Honour's government regrets that, in the interests of British Columbia and the labouring classes among its people,

it cannot see its way to introduce a measure in the legislature to repeal the provisions restricting the employment of Chinese and Japanese in the statutes referred to in the report of the Minister of Justice, approved by a minute of the Privy Council of Canada on 17th December, 1898, and that, if this recommendation be approved, a copy of it should be transmitted to the Secretary of State for Canada for the information of His Excellency's government."

The undersigned begs respectfully to submit that the conditions of labour have in no way changed since the report above quoted from was forwarded to His Excellency's government less than one year ago.

Since that time, the undersigned regrets to say, His Excellency's government has seen fit to disallow the "Labour Regulation Act, 1898," which had for its main object the protecting of this province from Oriental labour. His Excellency's government asks this government what it is proposed to do with reference to the private legislation passed by this legislature in 1899, and it is intimated that such Acts may be disallowed if this government does not see its way to bring in a Bill excluding Japanese from the operation of the said Acts.

Before consenting to the suggested proceeding the undersigned begs respectfully to urge upon the consideration of His Excellency's government the grave risk of exciting discontent in the province, and political friction between the two governments, should this government bring in such legislation without some assurance from His Excellency's government that it will as soon as possible after the opening of the Dominion House of Commons, introduce legislation increasing the capitation tax upon Chinese to \$500, and that His Excellency's government should also introduce a Bill on the lines of the Natal Act imposing an educational test upon immigrants.

The feeling in this province is so strong against the immigration of labouring classes from the Orient, that this government is convinced that powerful influences will be brought to bear to induce this government to request the legislature to re-enact the "Labour Regulation Act" above referred to.

The undersigned begs respectfully to submit that such a course might not unreasonably be the means of precipitating an acrimonious discussion between His Excellency's government and the governments of this province, which in all probability, would be extremely embarrassing to both.

The undersigned would also urge upon the consideration of His Excellency's government, the Private Acts containing the clause respecting Japanese, to which objection has been taken, and the disallowance of which Acts would seriously injure those in whose interests the legislation was passed.

These parties were all obliged to incur considerable expense before the completion of the legislation, and some of them have expended large sums of money upon the strength of the Bills having passed the legislature.

His Excellency's government will, therefore, readily realize that in some, if not in all of the cases alluded to, great hardship would be inflicted by the disallowance of the Acts referred to in the minute of the Privy Council, dated 14th December, 1899, to which allusion has already been made.

The undersigned, in conclusion, begs respectfully to urge upon His Excellency's government the extreme urgency of the present position, and to request that a reply may be communicated to Your Honour by telegraph.

Dated this 6th day of February, A.D. 1900.

ALEXANDER HENDERSON,
Attorney General.

(Approved February 10, 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 12th January, 1900.

To His Excellency the Governor General in Council:

The undersigned has under further consideration chapter 50 of the Acts of the legislative assembly of the province of British Columbia, passed in the 62nd year of Her Majesty's reign (1899), intituled "An Act to amend the Placer Mining Act."

Reference has already been made to this statute in two previous reports of the undersigned, viz.: that of 18th April, 1899, approved by Your Excellency on 2nd May, and the report of the 14th November, 1899, approved by Your Excellency on 14th December.

In the former report the undersigned advised that the correspondence which had been received from Her Majesty's ambassador at Washington should be referred to the Lieutenant Governor of British Columbia for his observations, with a view to further consideration of the matter by Your Excellency's government, and these papers were forwarded to the Lieutenant Governor by the Secretary of State on the 5th May last. Afterwards, no reply having been received at the department of the undersigned, the Deputy Minister of Justice on July 6th last wrote to the Under-Secretary of State saying that he had not yet received any reply and presumed the government of British Columbia had not answered. The deputy minister stated that it seemed proper for several reasons to report upon these statutes as early as possible and requested the Under-Secretary of State to remind the Lieutenant Governor of the matter and ask for an early reply. To this communication the deputy minister received an answer from the Under-Secretary of State to the effect that the Secretary of State had telegraphed the Lieutenant Governor on 4th July and on the following day received an answer from the Lieutenant Governor's private secretary saying that Mr. McInnes was then in the Atlin district, but that the matter had been referred to the Premier of the province who would reply at an early day. No further reference having been made to the undersigned upon the subject, he assumed that no answer had been received from the government of British Columbia and therefore in his report of 14th November last the undersigned referring to the statute now under consideration, stated that according to his information, no reply had been received to the despatch based upon his previous report, and recommended that the matter be again called to the attention of the Lieutenant Governor. That report as approved by Your Excellency having been communicated by the Secretary of State to the Lieutenant Governor, the Lieutenant Governor in a despatch of 22nd December last, addressed to the Secretary of State acknowledging the previous despatch, pointed out that the undersigned was mistaken in supposing that the Lieutenant Governor had not answered the communication of the Secretary of State of 5th May last, and he stated, as the fact appears to be, that on 7th June last he approved of a minute of his Executive Council embodying the views of his government as to the alleged grievances of the American citizens residing at Atlin in British Columbia and as to the scope of the legislation contained in the said chapter 50, and that on the following day he transmitted to the Secretary of State a certified copy of the said minute which was acknowledged by the Secretary of State on the 16th of the same month. Copy of this despatch of 8th June last from the Lieutenant Governor to the Secretary of State and of the approved minute of the Executive Council of the province to which the Lieutenant Governor refers have, within the last few days, been referred to the undersigned, together with a minute of Your Excellency in Council, dated 16th August last, passed upon a report of the Secretary of State dealing with the correspondence which had at that time taken place with respect to the matter aforesaid. At the same time there was referred to the undersigned copy of a despatch, dated 18th September, 1899, from the Right Honourable the Secretary of State for the Colonies to Your Excellency, acknowledging the receipt of Your Excellency's despatch, No. 180, of 24th August last, inclosing copy

of a despatch in which Your Excellency forwarded to Her Majesty's Chargé d'Affaires at Washington, copy of the said minute of Your Excellency in Council of 15th August. In this despatch Mr. Chamberlain states that Mr. Tower has been authorized by telegraph to communicate a copy of the minute to the United States government, and he specially refers to the fourth paragraph of the minute in which it is stated that "the policy of granting or withholding licenses to aliens is under the exclusive control" of the provincial legislature. On that point Mr. Chamberlain remarks that he would be glad if Your Excellency would refer your ministers to his despatch, No. 191, of 16th August last, inclosing copies of the judgment delivered by the Judicial Committee of the Privy Council on the appeal of the Union Colliery Company of British Columbia *vs.* Bryden and the Attorney General for British Columbia, and he states that it is laid down in that judgment, that section 91 (25) of the British North America Act invests the parliament of Canada with exclusive authority in all matters which directly concern the rights, privileges and disabilities of aliens who are resident in the provinces of Canada. Mr. Chamberlain concludes that it would appear therefore that in passing the statute which gave rise to the petition the legislature of the province acted *ultra vires*.

In these circumstances and before commenting further upon the issues raised with respect to the statute under consideration, it seems proper and necessary to point out that by the statute constituting the office and department of the undersigned, the duty is imposed upon the undersigned of advising Your Excellency upon the legislative Acts and proceedings of each of the legislatures of the provinces of Canada, and that the practice to be pursued with respect to these provincial statutes was established by order of the Governor General in Council at a very early period in the confederation of the provinces. By that Order in Council which is dated 9th June, 1868, and may be referred to at pages 61 and 62 of the volume of Dominion and provincial legislation, 1867-95, it is laid down that, upon receipt by the Governor General of the Acts passed in any province, they should be referred to the Minister of Justice for report, that he, with all convenient speed ought to report as to those Acts which he considers free from objection of any kind, and also as to those Acts he may consider either wholly or partially objectionable, and that in the latter case communication should be had with the provincial government with respect to such measures, so that the local government may have an opportunity of considering and discussing the objections taken, and so that the local legislature may have an opportunity of remedying the defects found to exist. The practice as so established has been consistently followed so far as the undersigned is aware, save in the present case, in which the reply of the provincial government has been considered and acted upon without reference to the undersigned. Attention is therefore drawn to the procedure in this case as exceptional and unconstitutional, and the undersigned hopes that for the future it will be remembered that the duty of reporting upon the provincial statutes rests with the Minister of Justice.

Referring now to the minute of the Executive Council of British Columbia, which accompanied the despatch of the Lieutenant Governor of 8th June last, the undersigned finds it stated in terms as follows: "The provincial government with the sanction of the legislature had an unquestioned right to reserve any lands they might think fit, from the prospector and miner. They might have said the Crown retains in its own possession for the present, all mines and minerals the property of the Crown in the northern part of the province, and no one will be allowed to prospect for or appropriate minerals in that section. Such a course might have been taken with a view of working these claims by the Crown for its own direct benefit, or with the purpose of having these claims in reserve, after the mining interests in the other parts of the province had been more fully developed." It is suggested by these remarks that the provincial government consider the legislation competent to the legislature, as establishing the policy of the government with respect to the disposal of provincial property, and that appears also to be the view expressed by the Secretary of State in his report

upon which Your Excellency's minute of 16th August last was founded. The Secretary of State there remarked that the public lands in British Columbia belong to the province, that the policy of granting or withholding licenses to aliens is under the exclusive control of the legislature and that it would be contrary to the spirit of the constitution to interfere with a provincial Act dealing with the disposition of its public lands. Upon this statement Mr. Chamberlain interposes the observation above referred to as to the authority of a provincial legislature to legislate affecting aliens.

In the opinion of the undersigned the action to be taken by Your Excellency in the present case does not depend upon the question as to how far a provincial legislature has exclusive authority with regard to the public property of the province. The Placer Mining Act, chapter 136 of the revised statutes of British Columbia, 1897, which is amended by the Act now in question, provided that every person over and not under eighteen years of age, and every joint stock company should be entitled to all the rights and privileges of a free miner, and should be considered a free miner upon taking out a free miner's certificate. No exception is there made for the case of aliens, nor is any such exception made by the mining laws of British Columbia in force at the time of the Union. The ordinance to amend the laws relating to gold mining (revised statutes of British Columbia, 1871, No. 90), enacts that every person over and not under sixteen years of age, shall be entitled to hold a claim and to a free miner's certificate upon payment of the proper fee. Under the ordinance to facilitate the working of mineral lands (No. 123 of the same volume), every person, association or company of persons whosoever are free to enter and explore for silver and all the baser metals and minerals subject to provisions and conditions of the ordinance. There is no restriction as to aliens in either of these ordinances. By the ordinances to assimilate the laws regarding aliens in all parts of the colony of British Columbia (No. 93 of the same volume), it is provided that every alien shall have the same capacity to take hold, enjoy, recover, convey and transmit title to land and real estate of every description in the colony, as if he, at the time of the passing of the ordinance, had been a natural born British subject. It appears therefore that at the time of the Union, which took place in 1871, the common law disability of aliens as to holding, conveying and transmitting title to real estate had been removed, and that so far as acquiring and holding mining rights and privileges were concerned, aliens had been placed upon the same footing as British subjects. So far as the undersigned is informed subsequent legislation of the province, even if it had been competent to do so, has not established any difference in this respect between British subjects and aliens. That achievement has been reserved for the Placer Mining Amendment Act, 1899, which, having regard to the rights of individuals, as distinguished from those of corporations, seems to have been enacted for no other purpose than to disqualify aliens from acquiring mining property of the rights of free miners. This purpose is effected by the repeal of section 3 of the Placer Mining Act and substituting another section. Under the original section as already stated, every person, subject to an age limit, was entitled. Under the substituted section it is enacted that every person who is not less than eighteen years of age and is a British subject, shall be entitled to all the rights and privileges of a free miner under the Act, and shall be considered a free miner, upon taking out a free miner's certificate, for the period of the certificate; also that a certificate taken out by any person not authorized to do so, shall be null and void, and that free miner's certificates issued before the coming into force of the Amending Act, the holders of which are not British subjects, shall not entitle such persons to take up, or record, any mining ditch, drain, tunnel or flume unless he shall have a free miner's certificate shall be valid only with regard to claims recorded prior to the coming into force of the amending Act. The Placer Mining Act provides in effect that no person shall be recognized as having any right or interest in any placer mine, mining lease, bedrock flume grant, or any minerals in any ground comprised therein or in any water right, mining ditch, drain, tunnel or flume, unless he shall have a free miner's certificate unexpired. It provides for the issue of free

miner's certificates, and that a free miner, during the continuance of his certificate, but not longer, shall have the right to enter, locate, prospect, and mine for gold and other precious metals, upon any lands in the province whether vested in the Crown or otherwise, with certain exceptions which it is not necessary here to mention. It follows, therefore, that by virtue of the Amending Act, if it is to have effect, no person, other than a British subject, may thereafter be recognized as having any right or interest in any of the mining properties to which the Placer Mining Act applies, and this, notwithstanding the fact, that at the time of the Union and thence down to the passing of the Act, aliens, as well as British subjects, might lawfully have acquired title to such property.

If this amendment of the Placer Mining Act had merely taken away from the executive the authority to grant mining rights to persons other than British subjects, there would be room for the contention that it was intended to affect only the administration of public property, and not the rights or capacity of aliens, but this is clearly not the purpose or result of this statute. The provisions of the original Act requiring miners to take out free miner's certificates, are intended as taxing provisions. The fees are \$5 for each certificate to an individual, and \$50 to \$100 for each certificate to a corporation. Except as to these fees no purpose seems to be served by these certificates. The Placer Mining Act and the Amending Act, now under consideration, have to be construed together. The rights granted or acquired under the Placer Mining Act are assignable, and the consequence of the amending Act is that the right or capacity of an alien to acquire or hold these mining rights, no matter from what source derived, is altogether taken away.

The government of Canada has always contended that, by virtue of the exclusive authority of parliament over the subject of naturalization and aliens, parliament and not the legislature, has the right to legislate respecting property and civil rights of aliens. This view has many times found expression in reports of the Ministers of Justice from time to time, and it has now been sanctioned by the judgment of the Judicial Committee of the Privy Council delivered on 28th July last, in the case to which Mr. Chamberlain refers. That judgment had reference to section 4 of the Coal Mines Regulation Act of British Columbia, 1890, and their Lordships stated that:—

“The leading feature of the enactments consists in this: that they have, and can have, no application, except to Chinamen, who are aliens or naturalized subjects, and that they establish no rule or regulation, except that these aliens or naturalized subjects shall not work, or be allowed to work, in underground coal mines within the province of British Columbia.”

Their Lordships see no reason to doubt that, by virtue of section 91 (25), the legislature of the Dominion is invested with exclusive authority in all matters which directly concern the rights, privileges and disabilities of the class, or Chinamen who are resident in the provinces of Canada. They are also of opinion, that the whole pith and substance of the enactments of section 4 of the Coal Mines Regulation Act, in so far as objected to by the appellant company, consists in establishing a statutory prohibition, which affects aliens or naturalized subjects, and therefore trench upon the exclusive authority of the parliament of Canada.

The undersigned considers that this judgment leaves no doubt on the question that the subject of aliens, including their rights, privileges and disabilities, is a matter coming within the classes of subjects enumerated in section 91 of the British North America Act, and which therefore cannot be deemed to come within the matters of a local or private nature comprised in the enumeration of subjects assigned to the legislatures of the provinces. The consequence would seem to be that the legislation in question is *ultra vires*.

It does not of course follow that, in the absence of parliamentary legislation, aliens, where their common law disability has been competently taken away, are not

to be subject to the general laws of the provinces respecting property and civil rights, because such legislation is referable to the subject of property and civil rights generally rather than to that of aliens. It does, however, in the opinion of the undersigned, follow that a provincial legislature cannot make exceptional provisions affecting aliens' rights and privileges.

It is stated in the report of the Executive Committee of the province, that provision has been made for the appointment of a judge of the Supreme Court as a commissioner, with full power to settle all disputes in the Atlin district in accordance with equity and the spirit of the Mining Act, without being bound by the strict letter of the law, and the undersigned is informed that inquiry has been made under such a commission, it may be, as a result, that the provincial government propose to offer some amendments to the mining laws.

A further objection to the Act in question arises from the provision that no joint stock company or corporation shall be entitled to take out a free miner's certificate unless the same has been incorporated, and not simply licensed or registered under the laws of the province. This provision has the effect of entirely excluding companies incorporated by the parliament of Canada and it seems directly to affect the regulation of trade and commerce or other matters within the authority of parliament, rather than any matter within exclusive provincial control.

It is true that all these questions affecting the validity of the statute may be submitted for the adjudication of the courts at the instance of the persons or corporations concerned, but not without considerable inconvenience and hardship to them. All difficulties might be removed by a proper Act of the legislature, and the undersigned at present considers that in order to bring the statute within the competency of the legislature, it ought to be amended so as to restore aliens to their former footing, and so as to remove the disqualification which it attempts to place upon companies incorporated by or under the authority of the parliament of Canada. Your Excellency's government has not, however, heretofore submitted to the provincial government the several considerations affecting the validity of the Act which are set forth in this report, and the undersigned therefore considers that he ought not at present to make any recommendation other than that a copy of this report, if approved, so far as it relates to the validity of the Act, be submitted to the Lieutenant Governor of the province, for the answer of his government, and that the Lieutenant Governor be requested to inform Your Excellency's government whether it is proposed to have the Act amended in the particulars suggested by the undersigned within the time limited for disallowance, if such a course should be deemed desirable.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Copy of a Report of the Attorney General, approved by the Lieutenant Governor in Council, 6 April, 1900, and transmitted to the Secretary of State 7 April, 1900, by the Lieutenant Governor.

To His Honour the Lieutenant Governor in Council:

The undersigned has had before him for consideration a communication from His Honour the Lieutenant Governor, dated the 9th day of March, 1900, addressed to the Honourable the Provincial Secretary, inclosing the report of the Honourable the Minister of Justice for Canada in connection with chapter 50 of the statutes of British Columbia, 1889, intituled "An Act to amend the Placer Mining Act."

The undersigned has the honour to report as follows in regard to said report:—

The undersigned begs respectfully to differ with the Honourable the Minister of Justice in his view as to the competency of the legislature of the province of British Columbia to pass the said statute, under the provisions of the British North America Act.

The undersigned has not overlooked the decision of the Privy Council with regard to section 4 of the Coal Mines Regulation Act. The undersigned feels confident that there is a wide distinction in law between an attempt to legislate with regard to the nature of the employment in which an alien might engage, in the province, and a law such as said Act, dealing entirely with the public property of the province.

It may be stated, however, that at the recent session of the legislative assembly, which for well known reasons culminated in no legislation being enacted, it was practically the unanimous opinion of the members, that the circumstances which made it advisable to pass the said chapter 50 in the session of 1899, had so changed that it was now advisable to repeal said statute.

The present government have announced as part of their policy, which they have submitted to the electors for consideration at the general election which is about to take place, their intention to introduce a measure to repeal said statute. It is altogether probable that no matter who may constitute the government when the next session of the House takes place, which will have to be not later than June or July of this year, the said chapter 50 will be repealed.

It would seem advisable, however, to the undersigned, for the Dominion government not to exercise its right of disallowance of this particular Act, for the reason that such disallowance would not settle the question; and if the statute is allowed to remain in force, it may be that an opportunity may arise for the legal question to be submitted to the court.

The undersigned also begs respectfully to differ with the Honourable the Minister of Justice in his opinion that the provision requiring a company to be incorporated under the laws of this province before being entitled to acquire rights under the Mineral Acts, is *ultra vires*. It seems to the undersigned that on the same ground as affecting the public property of the province, the courts would hold it to be *intra vires* of the provincial legislature to make laws of this kind.

The undersigned gathers from the papers before him that the time for disallowance expires on the 27th day of April, 1900. As it is not possible to have the general elections over and the new House assembled before that time, it is quite impossible for the government to give any assurance that the Act will be repealed in time to obviate the necessity of the question of disallowance being decided by the Dominion government.

Dated the 3rd day of April, 1900.

JOSEPH MARTIN,
Attorney General.

(Approved 14 April, 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 7th June, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copy of a petition signed by the Dominion Copper Company, Limited, and a number of other mining companies, in which the petitioners pray that chapter 43 of the statutes of British Columbia, 1899, entitled "An Act to amend the Master and Servant Act," be disallowed. The undersigned in his report of 14th November last, which was approved by Your Excellency on 14th December, referred to this statute as open to some objection, but did not recommend disallowance. At that time the petition now in question had not been received. The petition states in effect that the petitioners have not, since the enactment of the eight-hour law, hereinafter referred to, been able to employ labourers to work their mines in British Columbia upon profitable terms; that they made efforts to procure labourers in eastern Canada, but found it impossible to make contracts with or bring miners into British Columbia from eastern Canada, owing to the provisions of the Act in question, which would render their contracts void as against the labourers.

There is a question which the undersigned suggested in the report already referred to, as to whether the legislation complained of does not so far affect the regulation of trade and commerce, as to be *ultra vires* of the legislature. Apart from that question it seems clear to the undersigned that the statute is entirely within provincial legislative authority, and the remedy for the grievance complained of lies with the legislature.

Any question of *ultra vires* could be conveniently submitted for the determination of the courts, and the undersigned considers that it would be better to leave the petitioners to apply to the legislature, or to bring the question before the courts, if they be so advised, rather than in a case such as this to invoke the power of disallowance.

There has also been referred to the undersigned a petition addressed to Your Excellency in Council signed by the War Eagle Consolidated Mining and Development Company, Limited, and a number of other mining companies, praying for the disallowance of chapter 49 of the statutes of British Columbia, 1899, intituled "An Act to amend the Inspection of Metalliferous Mines Act."

Section 13 of the Inspection of Metalliferous Mines Act, Revised Statutes of British Columbia, 1897, chapter 134, provided that no boy under the age of sixteen years should be employed underground for more than fifty-four hours in any one week, or more than ten hours in any one day.

By section 4 of the Act now in question the said section is repealed and another substituted, by which it is enacted that no person shall be employed underground in any metalliferous mine for more than eight hours in every twenty-four hours, and this is the provision which gives rise to the claim for disallowance, it being urged that the limitation of employment to eight hours per day, is materially interfering with and injuriously affecting, the mining business in British Columbia, and that the Act is unconstitutional for a number of reasons stated in the petition.

The undersigned has attentively considered these grounds, but he is of opinion that none of the reasons urged affect the validity of the Act. It is quite true that there are several decisions of State or United States courts holding similar legislation unconstitutional, but these decisions have proceeded upon reasons which do not apply at all to the constitutional system of Canada. The undersigned considers that it was competent for the provincial legislature to limit the number of hours work to be allowed in mines within the province, as a matter of property and civil rights, or of merely local or private nature, or as coming within some one of the other enumerations of provincial authority.

As in the case, therefore, of the Act previously referred to, the remedy is also in the hands of the provincial authorities, and the petitioners must, in the opinion of the undersigned, be left to their application before that body.

The undersigned therefore recommends that neither of these Acts be disallowed; that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government, and to the solicitors of the petitioners for their information.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Approved 24 April, 1900)

DEPARTMENT OF JUSTICE, OTTAWA, April 12, 1900.

To His Excellency the Governor General in Council:

The undersigned referring to his report of 14th November, 1899, approved by Your Excellency on 14th December, 1899, upon the statutes of the legislative assembly of the province of British Columbia, passed in the year 1899, has the honour to state that in

the said report he called attention to the following statute as affecting Japanese or their rights to employment in British Columbia, viz.:—

- Chapter 39. "An Act respecting Liquor Licenses."
- Chapter 44. "An Act to grant a subsidy to a railway from Midway to Penticton."
- Chapter 46. "An Act to amend the Coal Mines Regulation Act."
- Chapter 78. "An Act to incorporate the Ashcroft Water, Electric and Improvement Company."
- Chapter 79. "An Act to incorporate the Atlin Short Line Railway and Navigation Company."
- Chapter 80. "An Act to incorporate the Atlin Southern Railway Company."
- Chapter 81. "An Act to incorporate the Big Bend Transportation Company, Limited."
- Chapter 83. "An Act to incorporate the Kamloops and Atlin Railway Company."
- Chapter 84. "An Act to amend the Kitimaat Railway Act, 1898."
- Chapter 85. "An Act to amend the Kootenay and North-west Railway Company's Act, 1898."
- Chapter 86. "An Act to amend the North Star and Arrow Lake Railway Act, 1898."
- Chapter 87. "An Act to incorporate the Pine Creek Flume Company, Limited."
- Chapter 88. "An Act to incorporate the South Kootenay Railway Company," and
- Chapter 89. "An Act to incorporate the Vancouver, Northern and Yukon Railway Company."

The undersigned, for reasons stated or referred to in the said report, considered it undesirable that the provisions affecting Japanese contained in these Acts should remain in operation, and has recommended that the British Columbia government should be asked to consider and state whether these clauses would be repealed within the time limited for disallowance. A copy of this report as approved, was duly transmitted to the Lieutenant Governor of British Columbia, but no assurance has been received that any amendment will be made to any of these statutes. The legislature has also been dissolved, and as the time for disallowance will expire within a few days it becomes necessary for Your Excellency to take further action, unless these enactments are to remain.

As in the case of the legislation of British Columbia for the year 1898, which was found objectionable upon the same ground, there are two classes of statutes now in question.

Chapter 39. "An Act respecting Liquor Licenses."

Chapter 44. "An Act to grant a subsidy to a railway from Midway to Penticton," and

Chapter 46. "An Act to amend the Coal Mines Regulation Act," are Acts of more or less general operation, not dealing specially with private interests, and may be disallowed without inconvenience. The other statutes above mentioned, however, are Acts of incorporation of private companies, or Acts in amendment of such incorporating Acts. The section affecting Japanese has apparently been introduced into these Acts not at the instance of the companies, but in pursuance of the policy of the provincial government, and in these circumstances the undersigned considers it would be unjust and perhaps productive of great hardship, if the charters of these companies or the Acts upon which their powers depend, were disallowed. The reasons which on a previous occasion operated to save the Private Acts from disallowance, may similarly again avail. The undersigned reaches this conclusion the more readily because he is of opinion that the provisions in question are *ultra vires* of the provincial legislature, as affecting aliens.

Inasmuch, however, as certain statutes of British Columbia were disallowed in 1899 on account of provisions, attempting to render illegal the employment of Japanese, and as certain other statutes will, if this report be approved, soon be disallowed for the same reason, the undersigned considers that by the time of another session of the

legislature it will be safe to hold that the views of Her Majesty's government and of this government with regard to anti-Japanese legislation, are generally and sufficiently understood in British Columbia, and, therefore, it may well be considered, in case of this objectionable section appearing in future Acts of incorporation or Acts affecting private companies, that these companies' Acts ought not to have exceptional treatment. The applicants may be held to have obtained the legislation at their own risk, and persons dealing with corporations incorporated by charters attempting to impose disabilities upon aliens may also be held to have acted with notice of the views entertained by Your Excellency's government, and of the action which would probably be taken with respect to such measures.

For these reasons, and the reasons stated in previous correspondence and reports, the undersigned recommends the disallowance of the said chapters 39, 44 and 46, and that the other chapters above mentioned be left to their operation.

The undersigned in the same report referred to chapter 50, "An Act to amend the Placer Mining Act."

That Act has also been the subject of a special report of the undersigned, dated 12th January, 1900, approved by Your Excellency on 10th February.

By the last mentioned report the undersigned set out the reasons on account of which he considered that the statute was *ultra vires*, and ought to be disallowed. This report, in pursuance of the recommendation of the undersigned, has been communicated to the provincial authorities, and there has just been referred to the undersigned a despatch of the Lieutenant Governor of British Columbia, dated 7th instant, transmitting copy of an approved minute of the Executive Council of the province, dated 6th instant, adopting the report of the Provincial Attorney General upon the communication of Your Excellency's government. The Attorney General states in his report that he differs from the view of the undersigned as to the authority of the legislature to pass the statute in question, both so far as aliens are concerned and as to incorporated companies. He states, however, that at the recent session of the legislative assembly it was practically the unanimous opinion of the members that it was advisable to repeal the Placer Mining Amendment Act, 1899, that the present government of the province has announced as part of its policy an intention to introduce a measure to repeal the said statute, and that it is altogether probable that the statute will be repealed, no matter who may constitute the government when the next session of the legislative assembly takes place. The Attorney General suggests, however, the expediency of allowing the statute to remain in force to afford an opportunity for a legal question to be submitted to the court, and he concludes by stating that it is quite impossible for the government to give any assurance that the Act will be repealed in time to obviate the necessity of the question of disallowance being decided by the Dominion government.

As the Act is in the opinion of the undersigned clearly in excess of provincial authority and ought not to remain in operation, and as the reply of the government of British Columbia cannot be regarded as a satisfactory assurance that the Act will be repealed, the undersigned considers that, for the reasons stated above and in his previous report, the said chapter 50 ought to be disallowed, and he recommends accordingly.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Chapters 39, 44 and 46 were accordingly disallowed on the 24th April, 1900.

(Approved 9 October, 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 20th September, 1900.

To His Excellency the Governor General in Council:

The undersigned has had under consideration copies of the following despatches from His Imperial Majesty's Japanese Consul to Your Excellency, viz.:—

(1) Despatch, dated 15th February, 1900, referring to an Act passed by the British Columbia legislature, No. 59, entitled "An Act to amend the Tramway Incorporations Act."

(2) Despatch, dated 1st September, 1900, calling attention to four Acts, (1) Liquor License; (2) Vancouver Incorporation Amendment; (3) Labour Regulations, and (4) Immigration.

(3) Despatch, dated 1st September, 1900, calling attention to Acts Nos. 5, 19, 42 and 46.

(4) Despatch, dated 5th September, 1900, calling attention to his despatch of September 1, 1900, which referred to Acts Nos. 5, 19, 42 and 46, and inclosing copy of a communication, dated 4th September, 1900, received by him from the Attorney General of British Columbia.

These have been referred to the undersigned by Your Excellency in Council, and he recommends that copies of the same be transmitted to the Lieutenant Governor of British Columbia for the report of his government upon the objections urged by the Japanese Consul to the legislation in question.

Respectfully submitted,

DAVID MILLS,

*Minister of Justice.**Japanese Consul for Canada to the Governor General*

VANCOUVER, B.C., 15th February, 1900

YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour of calling your attention to the fact that in the legislative assembly of British Columbia are introduced a Bill entitled "An Act to amend the Tramway Incorporation Act" and various private Bills, all of which contain sections prohibiting the employment of Japanese in works authorized by such Acts. As will be observed in the copy herewith inclosed the wording of the Bill first named is exactly the same as that of the Act bearing the same name that was disallowed by Your Excellency's government on 5th June last year.

In another Bill entitled "An Act to amend the Coal Mines Regulation Act," introduced by Hon. the President of the Council, Your Excellency will observe that an educational test has seemingly been set up in the section three of the Bill for any person to be employed underground in coal mines. But it is openly declared on the floor by the honourable member of the provincial government that "there was no use disguising the fact that the Bill aimed at the exclusion of one certain class—the Orientals," the last word evidently including Japanese. It is clearly elucidated by some members (especially Mr. A. E. McPhillips and Colonel Baker) that the proposer of the Bill intended to do indirectly what was vetoed directly by the highest court of appeal. Your Excellency will see full account of the debate on this Bill in the copies of the press herewith inclosed. Two sample copies of the Private Bills are also inclosed.

And, urging the same objections to those Bills as I had the honour of urging against legislation of the same nature passed at the last session, I most respectfully request you to extend to the present instance the same enlightened and vigorous policy that was pursued in regard to the legislation of late years, and that if those Bills should be passed here, Your Excellency will give that legislation such consideration as will lead to the disallowance of the same.

I avail myself of this occasion to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU,

Hu Imperial Japanese Majesty's Consul.

† Enclosures.

Copy of the Bill No. 15.

Copy of the Bill No. 14.

* Sample copies of private Bills.

Vancouver *World*, 1st and 2nd February.

Vancouver *News Advertiser*, 2nd and 3rd February.

Victoria *Colonist*, 13th and 14th February.

Telegram

Imperial Japanese Consul to the Governor General

VANCOUVER, B.C., 1st September, 1900.

Your Excellency's attention is respectfully called to the Acts respecting, first, liquor licenses; second, Vancouver Incorporation amendment; third, labour regulation; fourth, immigration, all of which passed legislature of British Columbia and assent just given by Lieutenant Governor of that province, the two bills last named, directed mainly against Japanese, while the rest affect interests of Japanese residents more or less injuriously. In the name of Imperial Japanese government may I respectfully request Your Excellency's best consideration in the matter. Am writing.

S. SHIMIZU,

Imperial Japanese Consul.

Imperial Japanese Consul, Vancouver, B.C., to Governor General

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,

VANCOUVER, B.C., 1st September, 1900.

YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour of calling your attention to the following bills that were passed by the legislative assembly of British Columbia, and to which assent was given yesterday by His Honour the Lieutenant Governor of the province, namely:—

(1) Bill No. 42, an Act relating to the employment on works carried on under franchises granted by private Acts.

The provision embodied in the section 4 of this Bill will wholly deprive those Japanese residents in this province, who are unable to read in any language of Europe, of the opportunity of employment on works specified in the section. It will be readily seen that the regulation is not intended as an educational test, first, because an

† All the inclosures of which only one copy of each was received have been forwarded to the Colonial Office.

* Copies inclosed of Bill No. 17, Act to Incorporate the Lake and Atlin Railway and Navigation Company.

Bill No. , Act to Incorporate the North Kootenay Water Power and Light Company, Limited.

exception is made to be exempt from the reading test for certain class, as provided in the section 3, and secondly, because the Japanese language is not admitted for the test, in spite of the fact that Japanese may be educated to the highest degree in their own tongue.

Nor is it a test of the vernacular language of this province, because other European languages than the English are admitted for the test. But judging from the debates on the floor, as reported in the press, this Bill is obviously and solely directed against Asiatics, including Japanese. Some clippings from the local press containing reports of the debates on this Bill are herewith inclosed for your information.

(2) Bill No. 46, An Act to regulate immigration into British Columbia.

It is scarcely necessary to point out that the object of this Bill is to prohibit immigration of Japanese into this province, as Chinese are made to be exempted from the application of this Act.

My objections as stated in the foregoing paragraph will apply to this instance with even stronger force. Should this Bill come into force, not merely immigration of labourers, but movement of Japanese merchants and travellers will also be injuriously interfered with.

Your Excellency is no doubt aware that the Imperial government which I have the honour to represent, entirely forbade emigration of Japanese labourers into Canada for the present. And it will continue to do so as long as it is deemed advisable. Under the circumstances, I fail to see the reason why the government of this province should pass such a legislation.

Some clippings from the local press containing reports of the debates on this Bill are also inclosed.

May I trust that this Bill will be disallowed before it shall come into force on the 1st day of January next?

(3) Bill No. 19, An Act to revise and consolidate the Vancouver Incorporation Act.

The section 7 of this Bill deprives the Japanese residents in the city of Vancouver of the franchise of voting in any municipal election.

For your information I may state that there are many Japanese residents in this city, merchants of good standing, missionaries, myself and others, who would thus be deprived of the privileges at present enjoyed.

This enactment, therefore, cannot but be considered as an unfriendly action. In addition I beg to remind you that the annual municipal election of the city is to be held in January.

(4) Bill No. 5, An Act respecting liquor licenses.

In section 2 of this Bill "Mongolians" are excluded from the expression "householder" and "inhabitant." The consequences of these provisions will be seen in the sections 22, 28 and 44 of the Bill. The Hon. the Attorney General of the province, who introduced the Bill, and by whose motion the word "Mongolians" was substituted for the original words "Chinese and Japanese," has seemingly evaded to answer my inquiry, officially made in writing, as to whether the word in question is meant to include Japanese. But some of his colleagues in the cabinet answered me in the affirmative in his presence. Here I beg to add that, though I was informed by a proper authority of the provincial government that this Bill, together with the others passed, received assent of the Lieutenant Governor of the province, it does not appear in the list of Acts, to which assent was given, that is published in the Provincial Parliamentary paper. Now, urging the same objections to these Bills as I had the honour of urging against legislation of similar nature passed at the late sessions, I would most respectfully request Your Excellency to extend to the present instance the same enlightened and vigorous policy, that was pursued by your government in regard to the legislation of late years, and to give that legislation such consideration as will lead to the prompt disallowance of the same.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU,
His Imperial Japanese Majesty's Consul.

Imperial Japanese Consul to the Governor General.

HIS IMPERIAL JAPANESE MAJESTY'S CONSULATE FOR CANADA,
VANCOUVER, B.C., 5th September, 1900.

YOUR EXCELLENCY,—With reference to my representation, dated the 1st instant, in regard to certain legislation of British Columbia, I have the honour to inform you that yesterday I have received an answer from the Attorney General of the province, regarding certain word of the Liquor License Act, copy of which is herewith inclosed. I beg also to state that I have found that to that Act, assent was given by the Lieutenant Governor on 10th August last.

I have, &c.,
S. SHIMIZU,
His Imperial Japanese Majesty's Consul.

VICTORIA, B.C., 4th September, 1900.

S. SHIMIZU, Japanese Consul,
Vancouver.

I must beg most respectfully to decline to express an opinion regarding the intention that resulted in introduction of word "Mongolians" into Liquor License Act, 1900, or as to construction to be placed thereon.

D. M. EBERTS,
Attorney General.

The Secretary of State for the Colonies to the Governor General.

DOWNING STREET, 5th October, 1900.

MY LORD,—With reference to my despatch, No. 186 of 5th July, and to previous correspondence as to the position of Japanese subjects in British Columbia, I have the honour to transmit you, for communication to your ministers, copies of a despatch from Her Majesty's Charge d'Affaires at Tokio and of a note from the Japanese Minister at this court on the subject.

2. Your ministers will observe that the Japanese Minister protests against certain Acts discriminating unfavourably against Japanese subjects, which have recently been passed by the legislature of British Columbia, and I have no doubt that this protest will receive attentive consideration of your government.

3. The action of the Japanese government in prohibiting the emigration of Japanese subjects to British Columbia, in view of the state of local feeling there, appears to Her Majesty's government to show their desire to deal with this question in a friendly spirit, and to obviate as far as possible the need for such.

4. I shall be glad to be furnished with copies of the Acts referred to in the Japanese Minister's note, and of any similar provincial legislation passed since 1898, with any observations which your ministers may wish to offer on them.

I have, &c.,

J. CHAMBERLAIN.

Mr. J. B. Whitehead to the Marquess of Salisbury.

TOKIO, 12th August, 1900.

MY LORD,—Having noticed in the local newspapers a statement to the effect that in view of a racial prejudice against the entry of Japanese labourers into the United States and British Columbia, the Japanese Foreign Office had on the 2nd instant ordered the Governors of the provinces to prohibit emigration to those two countries, I took an opportunity of asking Viscount Aoki whether this were the case.

His Excellency confirmed the report and said that he had issued this prohibition because, although the action of the Dominion government had been most friendly in the matter, he had become convinced that popular feeling in British Columbia was so strongly against Japanese emigration that it would be a wise precaution, in order to avoid disagreeable incidents, to suspend emigration to that colony for a time.

I have, &c.,

J. B. WHITEHEAD.

The Japanese Ambassador to the Marquess of Salisbury.

JAPANESE LEGATION, 18th September, 1900.

MONSIEUR LE MARQUESS,—The Japanese Consul at Vancouver has reported to my government that the legislative assembly of British Columbia had recently passed four Bills which provide discriminating treatment against Japanese subjects. On the 31st of August last the Bills in question have received the approval of the Lieutenant Governor of British Columbia, and they are now waiting the assent of the Governor General of Canada.

The Bills referred to are, first, the Liquor License Act, by which the Japanese undergo the discriminating treatment under the name of Mongolians; second, the Immigration Regulation Act, and the Labour Regulation Acts, in both of which the knowledge of the European language is made a necessary qualification of the immigrants and of the labourers; and third, the Amended Vancouver Incorporation Act, which exclude Japanese from enjoyment of various franchises.

Although the details of the Bills are not before me, the Consul's reports are enough to show that they were all formulated with the object of depriving Japanese emigrants from every facility and enjoyment of equal treatment. The Japanese Consul at Vancouver from the time when the Bills were first presented in the legislative assembly, has not failed to lodge the protest against the legislation so unfair towards the Japanese. His efforts, however, have not been successful and the Bills are now about to become laws.

The Imperial government being deeply sensible of the solicitous attention paid by Her Majesty's government, confidently believe that the legislation so unfriendly to Japan would not be sanctioned by the Governor General of Canada. And yet this renewed action on the part of British Columbia compels my government to instruct me to approach Your Lordship in a friendly spirit, with the view of asking Her Majesty's government to extend their enlightened policy, constantly shown by them towards Japan, to the present instance by inducing the Governor General of Canada to refrain from giving his assent to the Bills in question. Arguments against these unfair legislations have repeatedly been communicated to Your Lordship by my predecessor Mr. Kato on similar occasions. Therefore I do not here reiterate the reasons which may be said against those Bills, the Bills that only tend, it is feared, to impair the friendly relations now happily existing between Great Britain and Japan.

I have now the honour to ask Your Lordship's good offices so that Her Majesty's government will exercise their influence in order that the aforesaid Bills may not be allowed to take effect of laws.

I have, &c.,

HAYASHI.

(Approved April 9, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1900.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon a statute of the legislative assembly of British Columbia, passed in the 64th year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 17th September, being chapter 1, intitled "An Act relating to Extra-Provincial Investment and Loan Societies."

By this chapter the expression "extra-provincial investment and loan society" is defined to mean "any society duly incorporated for the purpose of raising moneys by periodical subscriptions from, and loaning the same to the several members only of the society, in shares of a par value of not less than one hundred dollars, nor exceeding five hundred dollars each, other than a society incorporated for the like purpose under the laws of the province of British Columbia."

Section 3 authorizes such society, when empowered by its charter and regulations, to extend its operations to British Columbia, to obtain a license from the local authorities authorizing it to carry on such business within the province, upon compliance with the provisions of this Act and upon payment of a fee of two hundred and fifty dollars. There are subsequent provisions regulating the application for license and the evidence to be adduced in support of it, also the form of license and a statement of the powers conferred by this Act upon such licensed societies. The effect of all these provisions appears to leave it optional to a company, otherwise duly authorized to carry on a loan and investment business in British Columbia, to apply for and obtain a license under the Act. There is no requirement that such a company shall take out a license as a condition to its carrying on business within the province. Sections 12, 13 and 14 provide that every society licensed under the Act shall deposit its mortgages and securities with the provincial minister of finance, or, in the event of these securities not being equal in value to the sum of \$25,000 that such society shall deposit cash or satisfactory securities for that sum; that interest, dividends, &c., upon the securities deposited with the Minister of Finance may be collected and retained by the society so long as it shall remain solvent and faithfully comply with the provisions of the Act, and perform the contracts entered into by it with the province; that the provisions of any Act for the time being in force in the province relating to the winding-up of companies shall apply to societies licensed under the Act, and that upon the appointment of a liquidator of any such society under any such Act, the securities deposited with the Minister of Finance shall be immediately handed over to the liquidator for the benefit of the creditors and members of the society within the province, to be realized and distributed amongst them in accordance with the laws of the province. Section 15 enacts that "any agent, employee, officer, director or other person whomsoever, offering for sale or attempting to negotiate the sale of any stock of any unlicensed extra-provincial investment and loan society shall, upon summary conviction, before a justice of the peace or stipendiary or police magistrate, be liable to a penalty of five hundred dollars for every such offence, the same to be carried to the account of the consolidated revenue of the province."

Having regard to the definition of the term "extra-provincial investment and loan society" above quoted, it seems clear that the offering for sale or attempting to negotiate the sale of the stock of such society is practically the only means by which the proper objects of the society can be advantageously or effectively carried out, and, therefore, the imposition of a penalty of five hundred dollars for each case of so doing, would make it impracticable for any such society, while unlicensed, to carry on its business within the province. The authority of a provincial legislature in respect of the incorporation of companies is expressly limited to provincial objects, and it is clear that parliament alone can authorize and define the powers of companies with

larger purposes. The regulation of trade and commerce extends at least to matters of interprovincial concern, and in the execution of this power and other powers arising under section 91 of the British North America Act, it has long been the practice of parliament and the policy of the Dominion government, to incorporate companies with power to do business within the scope of their charters throughout the Dominion, or in two or more of the provinces. Powers which include authority to transact business such as is mentioned in the interpretation clause of the statute now in question have been granted or may be conferred by or with the sanction of parliament, and it appears to the undersigned that for a province to impose a penalty upon the officers or agents of such companies, for no reason other than the execution of the powers vested in them by parliament, cannot be regarded otherwise than as an interference with the jurisdiction of parliament and the established policy of Your Excellency's government.

It is very likely true that a provincial legislature has authority to tax Dominion corporations and to raise such taxes by means of license fees. This statute might possibly be supported as a taxing Act under one or other of these powers, were it not that it attempts to compel extra-provincial societies of the character described, to procure licenses under the Act, and thereupon to make these societies subject to the provisions of sections 12, 13, and 14 above referred to, which impose obligations and liabilities upon the societies which presumably would not be authorized or provided for by their constituting Acts. There is a suggestion also that the business of the company is to depend upon its solvency, and that its business may be stopped and its property dealt with by the local authorities in the event of insolvency. These provisions cannot be upheld under any authority vested in the province to tax or raise revenue by means of licenses, and they are, in the opinion of the undersigned, *ultra vires* as affecting the regulation of trade and commerce, bankruptcy or insolvency, or other matters within the exclusive control of parliament. The undersigned considers, therefore, that sections 12 to 15, inclusive, should be repealed or at least that the Act should be so amended as to declare that these sections do not apply to companies incorporated by or under the authority of parliament, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia with a request that he cause Your Excellency's government to be informed as soon as convenient whether the suggested amendment will be made within the time limited for disallowance.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

From the Japanese Consulate for Canada at British Columbia to the Governor General.

VANCOUVER, B.C., 3rd January, 1901.

YOUR EXCELLENCY,—With reference to my representation dated the 1st September last, in regard to certain legislation of British Columbia, I have the honour to inform Your Excellency that by the government of British Columbia regulations to carry out the provisions of the Immigration Act, 1900, referred to in my previous representation, have been promulgated and immigration officers appointed. I beg to inclose herewith some clippings from a local newspaper containing copy of the regulations referred to, and would respectfully suggest that the sooner proper steps be taken by your government on this matter, the better it would be for all concerned.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

S. SHIMIZU,

His Imperial Japanese Majesty's Consul.

(Newspaper extracts.)

IT AIMS AT ASIATICS.

"Persons who cannot write in European characters must not come to British Columbia.—Transportation companies may fight.

Angus McAllister, of Vancouver, and W. H. Ellis, of Victoria, are immigration officers appointed to see to the carrying out of the provisions of Mr. Tatlow's British Columbia Immigration Act, 1900. The province is divided into two districts, Island and Mainland. The pivotal section of this Act is as follows:—

"The immigration into British Columbia of any person who, when asked to do so by the officers appointed under this Act, shall fail himself to write out and sign in the characters of some language of Europe, an application to the Provincial Secretary of the province of British Columbia, to the effect of the form set out in section B of this Act annexed, shall be unlawful.

Section B is as follows:

PROVINCE OF BRITISH COLUMBIA

SIR,—I claim to be exempt from the operation of the British Columbia Immigration Act, 1900. My name is . My place of abode for the past twelve months has been . My business calling is . I was born at in the year .

Yours, &c.,

There are certain exceptions to the rule, such as persons having certificates from the Provincial Secretary, Agent General or officer appointed for the purpose of the Act; any person specially exempted by the Provincial Secretary; Her Majesty's land and sea forces; officers and crew of any ship of war of any government; any person duly accredited to British Columbia under the authority of the Imperial, Dominion or any other government; any person the terms of whose entry into Canada have been fixed, or whose exclusion from Canada has been ordered by any Act of the parliament of Canada.

The Act, of course, is aimed at Chinese and Japanese. It may be contested by the transportation companies. If so the preliminary bout will come soon, as two Northern Pacific liners are due this week and an Empress next week.

The regulations promulgated by the government follow:

REGULATIONS

For the better carrying out of the provisions of the British Columbia Immigration Act, 1900.

For the purposes of the British Columbia Immigration Act, 1900, His Honour the Lieutenant Governor in Council has been pleased to approve the division of the province into two immigration districts, as follows:—

(a) Island District.—To comprise Victoria City, South Victoria, North Victoria, Esquimalt, Nanaimo City, North Nanaimo, South Nanaimo, Cowichan and Alberni electoral districts situate on Vancouver island.

(b) Mainland District.—To comprise all other territory of the said province.

Under the provisions of the said Act the following are appointed immigration officers for the district set opposite their respective names:—

William H. Ellis, of the city of Victoria, Island District.

Angus McAllister, of the city of Vancouver, Mainland District.

And for the better carrying out of the provisions of the said Act, His Honour the Lieutenant Governor in Council has been pleased to approve of the following regulations for the guidance of the said immigration officers:—

1. The immigration officers appointed for the said immigration districts under the provisions of the said Act shall, as soon as possible after the publication of these regulations, recommend for the approval of the Lieutenant Governor in Council such persons as they may seem fit to act as deputy immigration officers for such portions of the said immigration districts as may be designed in such recommendations. Upon such recommendations being approved by the Lieutenant Governor in Council, the persons so approved shall at once proceed to exercise the functions of immigration officers for the districts for which such appointments may be approved.

2. The immigration officers for the said island and mainland districts shall forthwith forward all transportation companies that are known to engage in the business of bringing or transporting immigrants into the province of British Columbia, either by land or water, a copy of these regulations, and request such transportation companies to designate a person or persons from whom the said immigration officers may obtain notice of the arrival of immigrants into the province of British Columbia. All such transportation companies are hereby notified that the provisions of section 6 of the said Act will, from the 1st day of January, 1901, be strictly enforced.

3. The said immigration officers shall, at all or any time they may consider advisable, meet any boat, train or other vehicle purporting to carry immigrants into the said province, and present to each and every such immigrant a copy of the form "B" set out in the schedule to the said Act, and upon the person refusing to comply with the provisions of section 4 of the said Act, the said immigration officer shall proceed according to the provisions of the said section.

4. The said immigration officers shall forthwith report to the provincial secretary the names of all transportation companies who may assist in the immigration of persons unable to comply with the provisions of the said Act."

(This report as to the Statutes of 1900 generally has not been approved by Order in Council.)

Report of the Hon. the Minister of Justice of 5th January, 1901

DEPARTMENT OF JUSTICE, OTTAWA, 5th January 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of British Columbia, passed in the sixty-fourth year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 17th September; and he is of opinion that these should be left to their operation without comment, with the exception of chapter 1, intituled 'An Act relating to Extra-Provincial Investment and Loan Societies,' as to which the undersigned has submitted a separate report, and the statutes hereinafter specially mentioned.

Chapter 11. "An Act to regulate immigration into British Columbia."

In the preamble of this Act, section 95 of the British North America Act is recited, and it is said to be expedient to regulate immigration into British Columbia.

Section 3 prohibits in effect immigration into British Columbia of any person to whom the Act applies, who, when asked to do so, shall fail himself to write out and sign in the characters of some European language an application to the Provincial Secretary in the form set out in the schedule to the Act. The form of application is printed in the schedule in the English language only.

Chapter 14. "An Act relating to the employment on works carried on under franchises granted by private Acts."

Section 4 of this Act provides in substance that as to works to be constructed or performed under provincial franchises conferred during or after the then present session of the provincial legislature, no employer shall engage or employ any workman,

who when asked to do so by a duly authorized officer, shall fail to himself read in a language of Europe, the Act now in question. And it is enacted that the employer shall be liable to a penalty upon summary conviction for employing any labourer not so qualified.

It is to be observed that the Act is not to apply to any person possessed of a certificate, signed by the Provincial Secretary or any officer appointed by the Lieutenant Governor in Council for the purposes of the Act, certifying that the person therein named is a fit and proper person to be employed as a workman under the provisions of the Act, but it appears that unless the employer or person employed holds such a certificate, the intention of the Act is that no workman shall be employed upon any of the works mentioned, unless he is able upon demand to read the Act in a European language. There would, of course, be no difficulty about this so far as a person qualified to read the English language is concerned, but to read it in any other language would involve a translation of it first into that tongue; and that might be a matter of considerable difficulty to a person quite able to read the statute in his own language when translated. The Act contains no provision requiring any translation to be made by the provincial authorities.

Chapter 18. "An Act respecting Liquor Licenses."

Under this Act Mongolians and Indians are excluded from those who may sign petitions for the granting of licenses, and from those who are reckoned as inhabitants of the district or vicinity within which the license is to be exercised.

Chapter 54. "An Act to revise and consolidate the Vancouver Corporation Act."

By section 7 of this Act it is enacted that no Chinaman, Japanese or Indian shall be entitled to vote at any municipal election for the election of mayor or aldermen.

Objection has been made to the four Acts above mentioned, in respect of their provisions particularly herein referred to, by His Imperial Japanese Majesty's Consul at Vancouver, B.C., upon the grounds set forth in his communications, copies of which were recently transmitted to the Lieutenant Governor of British Columbia by Your Excellency's direction, and are attached to the minute of council of 9th October last. The reply of the provincial government has been referred to the undersigned, and a copy of the same is submitted herewith.

The undersigned observes that chapter 11, being an Act respecting immigration, is apparently intended to have effect only in so far as it is authorized by section 95 of the British North America Act, and that the provincial statute would be superseded whenever Dominion legislation repugnant to it is enacted. The educational test imposed by the Act is not perhaps a very severe one, except in so far as it may in any case involve translation from English into another European language, but as parliament has already legislated with regard to the subject of immigration, and has not seen fit to impose any educational requirement whatever, the present Act seems inconsistent with the general policy of the law, and the undersigned considers that in cases where foreign relations are involved, it is not at present desirable that the uniformity of the immigration laws should be interfered with by special provincial legislation. It must be remarked also, that inasmuch as the provincial Act empowers the Provincial Secretary or any officer appointed by the government of the province for the purpose, to exempt any immigrant from the operation of the Act, the effect of the legislation virtually is to prohibit immigration of those not possessing the statutory qualifications, unless the provincial authorities dispense therewith, which they may do for any cause deemed sufficient, thus really placing in the hands of the officers of the provincial government an absolute discretion to deal differently with different nationalities or with the same or different classes of individuals of the same nationality, thereby giving scope for discrimination, which Your Excellency's government, although not responsible for the administration of the law, might be called up to explain or justify.

The undersigned considers, therefore, that parliament having undertaken to regulate immigration and not having required any educational attainments from

intending immigrants; in view of the objections raised by the Japanese consul, and other similar objections which may arise in the operation or administration of the Act, it would be inadvisable to leave this Act to its operation.

With regard to chapter 14, above mentioned, it is alleged and not denied that it is obviously and solely directed against Asiatics, including Japanese, and no reason is stated in the provincial reply as to the objects or purposes of the Act, or the reasons for requiring labourers to read it as a condition to their employment.

A Bill disqualifying Japanese and Chinese from employment upon similar works was passed by the British Columbia legislature in 1897 and reserved by the Lieutenant Governor, for the Governor General's consideration. The Governor General refused to sanction the measure. A similar Bill was at the following session enacted by the provincial legislature and disallowed after correspondence between Your Excellency's government and the home government. These facts are significant, and support to some extent the ground taken that the object of the present Act is to accomplish the same purpose indirectly, by requiring workmen to read this Act in a European language.

It seems to the undersigned, in view of the remonstrance of the Japanese government, that the grounds upon which the former statute was disallowed apply with practically the same force to the present one. This subject is also very clearly connected with that of immigration, and the undersigned is not at all satisfied, apart from the other considerations upon which he recommends disallowance, that Your Excellency's government ought to leave in operation a statute establishing such a difficult requirement of workmen, who to a very large extent must be drawn from the very class whose immigration into the country is provided for by the laws of the Dominion.

As to chapter 18, it is undoubtedly within the competence of a provincial legislature to regulate the sale of intoxicating liquors, and to define the evidence which must be produced by those applying for licenses, and, although the undersigned has given careful consideration to the representations of the Japanese Consul upon the subject, he is unable to discover any reason why the legislature of British Columbia ought not to be permitted to establish for the purposes of this Act the procedure by which licenses are to be sought or obtained. It seems to the undersigned that the Japanese residents of British Columbia may very well consider their interests in the matter of liquor licenses properly safeguarded. It is difficult to see that any considerable privilege is withheld from Mongolians. The precise provisions which are said to discriminate against them are sections 22, 28 and 44, which have to be read in the light of the interpretation clauses which define the expressions "householders" and "inhabitants" as not including Mongolians.

Section 22 provides in effect that no hotel license shall be granted in any locality unless a petition therefor, signed by at least two-thirds of the householders of the locality shall be presented to the board of license commissioners, unless in any locality there are not at least three such householders, in which case the commissioners may grant hotel licenses without the presentation of petitions.

Section 28 requires that on every application for an hotel license, the inspector shall make a written report to the commissioners, which shall contain among other things, a statement of the number of householders within three miles, and the inhabitants within one mile of the premises sought to be licensed not included in any municipality.

Section 44 establishes the fees which are to be taken by the provincial government for hotel licenses, and those are made to depend upon the number of inhabitants in the locality.

Certainly no right or privilege of the Japanese residents of British Columbia can be prejudicially affected by the requirements that at least two-thirds of the other householders of any locality must have subscribed to a petition for a hotel license before such license can be granted in the locality. Still less can there be any prejudice from the

license commissioners receiving the information which is required to be furnished under section 28, and the amount of the fee which should be exacted from any hotel licenses is so entirely in the judgment of the taxing authority, that the undersigned cannot conceive any reason why the Japanese residents of the province, who are not called upon to pay or contribute to the amount, except where they become voluntarily applicants for license, should object to the amount of the fee as established by law, or the standard adopted by the legislature for determining it.

Under section 92 of the British North America Act, among subjects assigned to the exclusive jurisdiction of the legislatures are "direct taxation within the province in order to the raising of a revenue for provincial purposes," "shop, saloon, tavern and auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes", "property and civil rights in the province," and "generally all matters of a merely local or private nature in the province."

It is indisputable that the legislation in question falls directly under or properly relates to one or other of these enumerations, and the undersigned does not consider that this statute can be interfered with.

In like manner the establishment of municipal corporations is entirely a matter of local concern, and the method of constituting a municipal council, or the determination of the municipal franchise are not, in the opinion of the undersigned, except perhaps for very exceptional and unusual reasons, subjects of review by Your Excellency's government. Such enactments are entirely local and domestic in their nature, and sufficiently justified, so far as the powers to be exercised by the government of Canada are concerned, by the fact that the local legislature has considered their provisions expedient or desirable. The undersigned apprehends that the withholding of the franchise in any municipality from any class of British subjects would not be made the ground for interference in the internal affairs of the community by Your Excellency's government, and he presumes that foreigners would not expect to stand upon any higher ground.

While referring to the Vancouver Incorporation Act, the undersigned desires to call attention also to section 125 which enumerates, as a subject with regard to which the council may from time to time pass, alter and repeal, by-laws, the regulation of trade licenses, including the licensing and regulating of insurance companies, also the regulating and licensing of any person carrying on the business of a wholesale or retail merchant trader, and the licensing and regulating of other trades, businesses and employments.

These powers of regulation must be construed as intended for local purposes only, and not as embracing or in any wise affecting, the larger subject of the regulation of trade and commerce generally, in respect to the particular trades therein enumerated, which is beyond the power of a provincial legislature and assigned to the exclusive jurisdiction of parliament.

Chapter 47. "An Act to incorporate the Grand Forks and Kettle River Railway Company."

This Act professes to authorize the company to construct, maintain and operate a line of railway from a point on the Canadian side of the international boundary line at or near the city of Grand Forks, in the Osoyoos division of Yale, district of British Columbia, thence to a point on the Canadian side of the international boundary line at or near Carson in the same division.

Chapter 55. "An Act to amend the Vancouver, Northern and Yukon Railway Company Act, 1899."

It is stated by section 2 that the company may construct and operate a line of railway from the city of Vancouver and other points running northerly to the northern boundary of the province.

The authority of the legislature with regard to local works and undertakings is limited by the exception of "lines of steam or other ships, railways, canals, telegraphs,

and other works and undertakings connecting the provinces with any other or others of the provinces or extending beyond the limits of the province." In view of the fact that the works and undertakings with regard to which a province may legislate must be local, and having regard to the exception quoted, it seems questionable to the undersigned whether it is competent to the province to authorize the construction or operation of a railway to the boundary line of a province or having its two termini upon the boundary. The undersigned does not on that account recommend the disallowance of these statutes, but he commends the matter to the consideration of the provincial government, and the companies concerned, leaving the question to the determination of the courts if necessary.

The undersigned, therefore, recommends that of the Acts referred to or specially mentioned in this report, chapter 11, "An Act to regulate immigration into British Columbia," and chapter 14, "An Act relating to the employment on works carried on under franchises granted by private Acts," be disallowed, and that all the other Acts be left to their operation. He recommends further that a copy of this report if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his government, also that a copy of the report so far as it affects the objections of the Japanese consul be transmitted to him.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

The above Acts chapters 11 and 14 were disallowed accordingly.

The Secretary of State for the Colonies to the Governor General

DOWNING STREET, 22nd January, 1901.

My LORD,—With reference to my despatch, No. 272, of 5th October last, I have the honour to transmit to you, for the consideration of your ministers, a copy of a further note from the Japanese Minister at this court protesting against the enforcement of the British Columbia Immigration Act, 1900.

2. I shall be obliged if you will furnish me at the earliest possible opportunity with the report requested in my despatch under reference on this measure and the other mentioned in Baron Hayashi's note of 18th September last.

I have the honour, &c.

J. CHAMBERLAIN.

The Japanese Ambassador to the Marquess of Lansdowne.

JAPANESE LEGATION, 7th January, 1901.

MONSIEUR LE MARQUIS,—I have the honour to inform you that I am in receipt of a telegram from the Japanese Consul at Vancouver, informing me that regulations have been promulgated in British Columbia to carry out the Immigration Act which has passed the legislative assembly of that province on 31st August last, and that necessary officers have been appointed by the provincial government for that purpose. To that legislation as well as other similar measures adopted by that province my government has taken exception, and I had the honour under its instructions to write on 18th September last, to Your Lordship's predecessor that Her Majesty's government may see its way to exercise its influence to annul those enactments. Her Majesty's government has given prompt attention to my request and the matter has since been referred to

the Dominion government. In view, however, of the steps now being taken by the authorities of that province to enforce those Acts, I have the honour to request Your Lordship that the attention of the Governor General of Canada may be called again, and that his sanction may without further delay be withheld from those Acts.

I have, &c.,

HAYASHI.

The Secretary of State for the Colonies to the Governor General.

DOWNING STREET, 22nd January, 1901.

MY LORD,—With reference to my despatch, No. 25, of even date respecting the British Columbia Immigration Act, 1900, I have the honour to request that you will invite the serious attention of your ministers to the question of the competence of a provincial legislature to pass such legislation.

2. It is understood from press reports that the Act is of a restrictive nature, based on the Natal Act, and having regard to the general principles on which the British North America Act is based, it would appear that such a measure is *ultra vires* for any legislative body in Canada, other than the Dominion parliament.

3. The whole scheme of the British North America Act implies the exclusive exercise by the Dominion of all "national" powers, and though the power to legislate for the promotion and encouragement of immigration into the provinces may have been properly given to the provincial legislatures, the right of entry into Canada of persons voluntarily seeking such entry is obviously a purely national matter, affecting as it does directly the relations of the Empire with foreign states.

I have, &c.,

J. CHAMBERLAIN.

(Approved 27 June, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 5th March, 1901.

To His Excellency the Governor General in Council:

There have recently been referred to the undersigned copies of the following despatches from the Right Honourable the Secretary of State for the Colonies addressed to Your Excellency, viz.: Despatch, dated 5th October, 1900, and two despatches dated 22nd January, 1901. These refer to legislation of the province of British Columbia passed during the year 1900, which has been objected to by the Japanese minister at the Court of St. James on behalf of his government.

In the despatch of 5th October, 1900, Mr. Chamberlain asks to be furnished with copies of the Acts referred to in the Japanese minister's note and of any similar legislation passed since 1898, with any observations which Your Excellency's ministers may wish to offer upon them.

The undersigned submits herewith copies of the volumes of the British Columbia legislation for 1898, 1899 and 1900, which contain the statutes to which Mr. Chamberlain wishes to refer.

Previous to the receipt of the despatches above mentioned the undersigned had considered the legislation in question and had prepared a report to Your Excellency, copy of which is appended hereto. (See Report of 5th January, 1901, p. 594 ante.)

The undersigned also submits with his report copy of the correspondence and Orders in Council with respect to the legislation of 1898. These, in the opinion of the undersigned, together with the Orders in Council passed respecting the British

Columbia legislation of 1899, which are of record in the Privy Council office, furnished the information which is called for by the despatches from the Colonial Office above mentioned.

The undersigned desires to direct Mr. Chamberlain's attention to the fact that the statutes of British Columbia for the year 1900 were received by the Secretary of State for Canada on 17th September last; that the time for disallowance will expire within one year from that date, and that in the view of the undersigned, as set forth in his report of 5th January last (*See* page 594), submitted herewith, the objections raised on behalf of the Japanese government to chapter 18, "An Act respecting Liquor Licenses," and chapter 54, "An Act to revise and consolidate the Vancouver Incorporation Act," were not of such a serious character as to call for the disallowance of these Acts which contain many other useful provisions.

The undersigned has had some correspondence with the government of British Columbia with regard to these statutes, and that government is now considering, as the undersigned is informed, the propriety of amending chapter 11, "An Act to regulate immigration into British Columbia," and chapter 14, "An Act relating to the employment on works carried on under franchises granted by private Acts," so as to remove the grounds of objection taken on behalf of the government of Japan.

The undersigned recommends that a copy of this report, if approved, with the statutes and exhibits herein referred to, together with the said Orders in Council of 1899, be transmitted immediately to the Right Honourable the Principal Secretary of State for the Colonies with the request that he inform Your Excellency's government as early as possible whether His Majesty's government will be content with the disposition which was recommended to be made by the report of the undersigned of 5th January last, or whether any, and what further action ought to, in the opinion of His Majesty's government, be had in the matter.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

Mr. E. P. Davis, K.C., to the Japanese Consul.

VANCOUVER, 9th March, 1901.

DEAR SIR,—Section 5 of the Vancouver Incorporation Act broadly provides that every male and female soul of the full age of twenty-one years who is the owner or tenant of real property of a certain value shall be entitled to the municipal franchise in the city of Vancouver without any regard whatever to the question of nationality or naturalization. The question that arises then is whether the provincial legislature has the power to prohibit certain people from exercising this right so given, merely and solely because such person is a Japanese or a Frenchman or belongs to some other foreign nationality; in other words, whether the provincial legislature has power to attach certain restrictions upon particular individuals, solely on account of their nationality.

Section 91 of the British North America Act, subsection 25, gives to the Dominion parliament exclusive jurisdiction with reference to naturalization and aliens. Section 92 of the same Act, subsection 8, gives to the provincial legislature exclusive jurisdiction with reference to municipal institutions in the province. But it is further provided at the end of section 91, that any matter coming within any of the classes of subjects enumerated in that section, shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects in section 92.

Section 7 of the Vancouver Incorporation Act (speaking always with reference to Japanese) is capable of being viewed in two different aspects, according to one of which it appears to fall within the subjects assigned to the provincial parliament by section 92 of the British North America Act, subsection 8, whilst according to the other it clearly belongs to the class of subjects exclusively assigned to the legislature of the Dominion by section 91, subsection 25.

The leading feature, however, of the section consists in this, that it has and can have no application except to Japanese (whether aliens or naturalized), and that it establishes no rule or regulation respecting municipal institutions, except that Japanese, as Japanese, shall not under any circumstances be allowed the right of voting in the city of Vancouver. This, it seems to me, is unquestionably dealing, and dealing only, with the subjects of aliens, which is covered by subsection 25, section 91, of the British North America Act. That section, in other words, establishes a statutory prohibition affecting Japanese who are aliens, and therefore necessarily trenches upon the exclusive authority of the parliament of Canada, the necessary result of which is, in my opinion, that section 7, so far as it relates to Japanese, is *ultra vires* of the provincial legislature and illegal.

I do not see how the Union Colliery case (Privy Council case, 1899), can be distinguished from the present.

I have, &c.,

E. P. DAVIS.

Copy of a Report of a Committee of the Executive Council, approved by the Lieutenant Governor in Council, 18 March, 1901, transmitted by the Lieutenant Governor to the Secretary of State, 20 March, 1901.

The Committee of Council submits for the approval of His Honour the Lieutenant Governor the undermentioned resolution of the legislative assembly of British Columbia, namely:—

"Whereas the Dominion 'Chinese Immigration Act, 1900' has proven inadequate to check the immigration of Chinese;

And, Whereas, the said Act leaves the threatening influx of other Asiatics wholly unrestrained;

Be it Resolved, that an humble Address be presented to His Honour the Lieutenant Governor, praying him to advise His Excellency the Governor General of Canada that, in the opinion of this House, the said Act should be amended so as to make all immigrants comply with an educational test, similar to that imposed in the colony of Natal."

The committee advise that a copy of this minute, if approved, be forwarded to the Honourable the Secretary of State of Canada.

Dated this 16th day of March, 1901.

J. D. PRENTICE,

Clerk, Executive Council.

The Administrator of Province of British Columbia to the Secretary of State.

VICTORIA, B.C., 15th May, 1901.

SIR,—With reference to your despatch of the 16th ultimo, and its inclosure, conveying a request that the federal government may be informed whether the amendment to "An Act relating to Extra-Provincial Investment and Loan Societies," suggested by the Minister of Justice, in his report, dated 27th December, 1900, will be made by

this government within the time limited for disallowance, I have the honour to state, for the information of His Excellency's government, that "An Act to amend the Extra-Provincial Investment and Loan Societies Act, 1900," which was assented to by me on the 11th instant, provides that sections 12 and 15, inclusive, shall not apply to companies incorporated under the laws of Canada, and thus amends the former statute in the manner suggested by Mr. Mills.

I am, &c.,

GEO. A. WALKEM,
Administrator.

(Approved 6 June, 1901.)

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1901.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 27th December last, approved by Your Excellency in Council on 9th April last, with reference to chapter 1 of the British Columbia statutes, passed in the 64th year of Her late Majesty's reign (1900), intituled "An Act relating to Extra-Provincial Investment and Loan Societies," has the honour to state that there has been referred to him copy of a despatch of the 15th instant from the administrator of the government of British Columbia to the Secretary of State for Canada in which he states, for the information of Your Excellency's government, that "An Act to amend the Extra-Provincial Investment and Loan Societies Act, 1900," was assented to by him on the 11th instant, and provides that sections 12 and 15, inclusive, of the amended Act shall not apply to companies incorporated under the laws of Canada, thus amending the former statute, as the administrator states, in accordance with the suggestions of the undersigned. Copy of the said despatch is submitted herewith.

The undersigned observes that he stated in his said report of 27th December last, sections 12 to 15 inclusive, should be repealed, or at least that the Act should be so amended as to declare that these sections do not apply to companies incorporated by or under the authority of parliament. It is understood, therefore, that the statute has been amended according to the alternative suggestion of the undersigned, and it will, in that event, be unnecessary for Your Excellency's government to take any further action in the matter. The undersigned recommends, however, that the administrator of the government of British Columbia be requested to forward to Your Excellency's government a certificate copy of the amending Act as soon as convenient, and within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Letters transmitted 23rd August, 1905, by the Secretary of State for the Colonies to the Governor General for the information of his Ministers.

The Colonial Office to the Foreign Office.

DOWNING STREET, 8th August, 1901.

SIR,—With reference to the letter from this department of the 25th ultimo, I am directed by Mr. Secretary Chamberlain to transmit to you, to be laid before the Marquess of Lansdowne, the accompanying despatch from the Governor General of Canada respecting the British Columbia legislation to which the Japanese government has objected.

2. From the printed inclosure, a copy of which was previously sent to your department, of 12th July, 1899, Lord Lansdowne will observe that of the legislation passed in 1898 affecting Japanese, two Acts of a general character (chapters 28 and 44) were disallowed, but other Acts containing similar clauses were allowed to remain in operation for the reason stated in the marked passage on page 31 of the print, viz.: That these Acts being mainly concerned with the incorporation of companies, and having already come into operation, great inconvenience and hardship would have been caused to the companies if they had been disallowed.

3. With regard to 1899 legislation, which is referred to in the Foreign Office letter of 24th April, 1899, and connected correspondence, Lord Lansdowne will see that the Dominion government disallowed chapter 39 (relating to liquor licenses), section 36 of which prohibited the grant of a license to any Indian, Chinese or Japanese; chapter 44 (the Midway-Penticton Railway Subsidy Act), which was objected to, not by the employment of Chinese or Japanese labourers on the railways in question; and chapter 50 (the Placer Mining Act Amendment Act), which was objected to, not by the Japanese government, but by the United States government; but certain Acts of a limited character, similar to the 1898 Acts referred to above, were left in operation for the same reason as was given in those cases, and for the further reason that the clauses in question were *ultra vires* under section 91 (25) of 30 Vic., chapter 3, an opinion which seems to be borne out by the judgment of the Privy Council on the appeal of the Union Colliery Company of British Columbia, Limited, vs. Bryden and the Attorney General for British Columbia, a copy of which was sent to your department on the 18th September, 1899. The British Columbia government was warned that any Act which might hereafter be passed similar to those passed in 1898 and 1899 affecting the employment of Japanese, would probably be disallowed.

4. With regard to the 1900 legislation, it will be seen that the Canadian government intend to disallow chapter 11, regulating immigration, and chapter 14, relative to employment on works carried out under legislative franchises, but to leave in operation chapters 18 and 54; and Mr. Chamberlain proposes, with Lord Lansdowne's concurrence, to acquiesce in the decision of the Dominion government. Chapter 18, the Liquor License Act, does not contain the provision prohibiting the grant of a license to any Japanese, which appeared in the Act disallowed in 1899, but only disentitles Mongolians (with Indians) from recommending as "householders" applications for the issue of licenses, and excludes them from the number of inhabitants in the vicinity of the proposed "hotel," which is one of the data on which an application for a license is decided—which provisions do not appear to constitute a disability to which the Japanese government can seriously object. Chapter 54 only disentitles Japanese from voting at Vancouver municipal elections (section 7), and the Dominion government could hardly disallow this long and important Act on the ground of this one objectionable provision; and further as the clause is *ultra vires* (section 91, 24 and 25, of 30 Vic., chap. 3), a Japanese resident in Vancouver, if not otherwise disqualified, can legally enforce his claim to be put in the list of voters.

5. I am to request the favour of an early reply, as it will be necessary to inform the Dominion government of the decision of His Majesty's government before the 17th September next, when the period during which the power of disallowance may be exercised will expire.

I am, &c.,

H. BERTRAM COX.

BRITISH COLUMBIA

The Foreign Office to the Colonial Office.

FOREIGN OFFICE, 19th August, 1901.

SIR,—I am directed by the Marquess of Lansdowne to acknowledge the receipt of your letter of the 8th instant, forwarding a despatch from the Governor General of Canada respecting the British Columbian legislation to which the Japanese government have objected.

With regard to the 1900 legislation, Lord Lansdowne noted that the Canadian government intended to disallow chapter 11 regulating immigration, and chapter 14, relative to employment on works carried out under legislative franchises, but to leave in operation chapter 18, "An Act respecting Liquor Licenses," and chapter 54, "An Act to revise and consolidate the Vancouver Corporation Act."

Lord Lansdowne concurs in Mr. Secretary Chamberlain's proposal to acquiesce in the decision of the Dominion government.

I have, &c.,

T. H. SANDERSON.

(Approved 11 September, 1901.)

DEPARTMENT OF JUSTICE, 4th September, 1901.

To His Excellency the Governor General in Council:

The undersigned referring to the order of Your Excellency in Council of 27th June last, respecting certain statutes of the legislative assembly of British Columbia, passed in the 64th year of Her late Majesty's reign (1900), has the honour to state that in reply to a communication which was sent to the Right Honourable the Principal Secretary of State for the Colonies in accordance with the recommendation of the said Order in Council, a cable reply has been received by Your Excellency from Mr. Chamberlain, dated 22nd August last, stating that His Majesty's government concurs in the decision of Your Excellency's government with regard to these statutes. This decision is stated in the report to Your Excellency of the undersigned, dated 5th January last, in which it is recommended, for the reasons therein stated, that chapter 11 of the said statutes, intituled "An Act to regulate immigration into British Columbia," and chapter 14, intituled "An Act relating to the employment on works carried on under franchises granted by private Acts," be disallowed, and that the other Acts referred to, or specially mentioned in the said report, be left to their operation.

The undersigned recommends, therefore, that the two statutes above mentioned, viz.: chapters 11 and 14 be disallowed.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Chapters 11 and 14 were accordingly disallowed 11th September, 1901.

1 EDWARD VII, 1901

2ND SESSION—9TH LEGISLATURE

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, 31st December, 1901.

These Acts were received by the Secretary of State for Canada on 24th June last. A separate report will be made upon the following chapters:—

Chapter 10, "An Act to amend the Companies' Act, 1897."

Chapter 25, "An Act respecting the Fisheries of British Columbia."

Chapter 32, "An Act to authorize the loan of \$5,000,000 for the purpose of aiding the construction of railways and other public works."

Chapter 37, "An Act to amend the 'Inspection of Metalliferous Mines Act' and amending Act."

Chapter 46, "An Act to provide for the collection of a tax on persons."

Chapter 65, "An Act to amend 'The Arrowhead and Kootenay Railway Company Act, 1898.'"

Chapter 68, "An Act to incorporate the Chilcat and Klehini Railway and Navigation Company."

Chapter 69, "An Act to incorporate the Coast-Kootenay Railway Company, Limited."

Chapter 70, "An Act to amend the 'Columbia and Western Railway Company Act, 1896.'"

Chapter 71, "An Act to incorporate the Comox and Cape Scott Railway Company,"

Chapter 72, "An Act to incorporate the Crawford Bay Railway Company."

Chapter 77, "An Act to incorporate the Imperial Pacific Railway Company."

Chapter 79, "An Act to incorporate the Kootenay Central Railway Company."

Chapter 80, "An Act to incorporate the Lake Bennett Railway."

Chapter 81, "An Act to incorporate the Midland and Lake Vernon Railway Company."

Chapter 83, "An Act to incorporate the Queen Charlotte Islands Railway Company."

Chapter 84, "An Act to incorporate the Vancouver and Grand Forks Railway Company."

Chapter 85, "An Act to incorporate the Victoria Terminal Railway and Ferry Company."

Chapter 86, "An Act empowering the Corporation of the City of Victoria to lease the market building premises and otherwise to carry into effect the 'Victoria Terminal Railway Bylaw, 1900.'"

Chapter 87, "An Act to incorporate the Yale Northern Railway Company."

Chapter 45, "An Act respecting certain land grants."

This Act recites that, under the provisions of certain statutes of the province, grants of land have been made from time to time to railway companies to aid in the construction of certain railways. That it was the intention of the Legislature and of the Government that the said grants should be subject to the provisions of the "Land Act" and its amendments and re-enactments, reserving to the Crown a royalty upon the timber and other wood, and conferring powers for the enforcement of the said royalty, and that it is desirable to specifically provide and declare that the said provisions of the "Land Grant" apply to lands granted as aforesaid. The statute proceeds to enact accordingly.

Objection to this statute has been made by Messrs, Bodwell and Duff, barristers of Victoria, on behalf of the Nelson and Fort Sheppard, and Kaslo and Slocan Rail-

way Companies, upon the grounds set forth in the letter of Messrs. Bodwell and Duff of 30th August last, copy of which is submitted herewith.

The Deputy Minister of Justice, by direction of the undersigned, communicated this objection, with the correspondence, to the Attorney General of British Columbia by letter of 16th September last, copy of which is submitted, together with copy of the reply received from the Attorney General. The undersigned does not deem it necessary to consider in detail the remarks of the Attorney General. He does not acquiesce in all of them, but the undersigned bases his refusal to recommend disallowance upon the fact that the application proceeds upon grounds affecting the substance of the Act with regard to matters undoubtedly within the legislative authority of the province and not affecting any matter of Dominion policy. It is alleged that the statute affects pending litigation, and rights existing under previous legislation and grants from the province. The undersigned considers that such legislation is objectionable in principle and not justified, unless in very exceptional circumstances, but Your Excellency's government is not in anywise responsible for the principle of the legislation, and as has been already stated in this report, with regard to an Ontario statute, the proper remedy in such cases lies with the legislature or its constitutional judges.

Chapter 73, "An Act to incorporate the Crow's Nest Southern Railway Company," has already been reported upon. *Vide* report of the undersigned, approved 25th September last,

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

The following correspondence was communicated to the Attorney General of British Columbia by the Deputy Minister of Justice 16 September, 1901:—

Messrs. Bodwell and Duff to the Honourable the Minister of Justice re Chapter 45.

VICTORIA, B.C., August 30th, 1901.

SIR,—The undersigned, on behalf of the Nelson and Fort Sheppard and the Kaslo and Slocan Railway Companies, desire to submit the following for your consideration with reference to an Act passed at the last session of the Legislative Assembly of the Province of British Columbia, being chapter No. 45, and entitled "An Act respecting certain Railway Land Grants."

Section 2 of the Act is in the following words:—

"It is hereby declared and enacted that all grants of Crown land heretofore made to railway companies by the Lieutenant Governor in Council in aid of or as a subsidy for construction of railways, were subject to the reservation of a royalty to the Crown upon all timber and other wood cut upon lands to be granted by the Crown and with respect to the power conferred for the enforcement of said royalty."

The Nelson and Fort Sheppard Railway was incorporated by an Act of the local Legislature, being chapter 38 of the statutes of 1891. In 1892, an Act was passed providing a land subsidy in aid of the said railway. It was thereby enacted that it should be lawful for the Lieutenant Governor in Council to grant to the company lands in the electoral district of West Kootenay not exceeding 10,240 acres for each mile of the railway.

It was known at the time that these lands were not valuable for agricultural purposes. All minerals were reserved. Except, therefore, as to such portion of them as would be used for town sites along the railway, the value of the concession depended almost entirely upon the timber which was to be found thereon.

In the year 1888, a section was introduced in the general Land Act of the province which was in force at the time of the passing of the subsidy Act, and which

provided that there should be reserved for the use of the Crown a royalty of fifty cents per thousand feet board measure in respect of all timber suitable for spars, bolts, saw-logs or railroad ties, which should be cut upon any Crown lands, patented lands, timber leaseholds, timber lands, "and upon any lands hereafter granted."

In the year 1896, the Land Act was amended by providing that the royalty should apply to timber used as props for mining purposes, shingle or other bolts of cedar, and a further royalty of 25 cents on every cord of other wood cut upon Crown lands.

In 1893, the Nelson and Fort Sheppard Railway was declared a work for the general advantage of Canada, and was re-incorporated as a Dominion railway, being Chapter 57 of the Dominion Statutes of 1893. The railway was built under the Dominion Statute, and after completion, the lands mentioned in the subsidy Act of the local Legislature were duly granted to the company. Shortly after, a question arose as to whether the timber on the lands so granted was subject to royalty. The railway company contended that they were not liable, and the government insisted that the timber on such lands was subject to the provisions of the Land Act. It was proposed by the company that the question should be settled either by a reference to the Supreme Court of British Columbia under the "Supreme Court Reference Act," or by some other form of litigation, and in the meantime an arrangement was entered into between the government and the company in the following words:—

VICTORIA, B.C., January 26th, 1897.

"SIR,—Referring to your conference with the government on 13th inst., on which occasion the following arrangement with reference to royalties on timber and cord-wood cut upon the Nelson and Fort Sheppard Railway Company's land grant was agreed upon, viz:—

"1st. You are to make monthly returns to the Provincial Timber Inspector at Vancouver, giving the particulars of timber and cord-wood cut by all and every person whatsoever on the said land grant, and to remit your cheque therewith in payment of royalties thereon.

"2nd. The persons actually cutting timber or cord-wood under authority from your company are also to make returns to the Timber Inspector at Vancouver monthly in accordance with the provisions of the Land Act.

"3rd. Official receipts will be forwarded to you for all royalties paid, which will contain a clause that in the event of its being decided that the said royalties are by law not due to the Crown, the moneys so paid will be refunded to you.

"4th. The books of your company and those of persons cutting timber by your authority are to be open to the inspection of government officers.

"This letter is to confirm the above arrangement, and those persons who have already paid royalty on such timber will be notified of the purport of this arrangement and advised that in future the government look to you to make payments.

"Some printed forms for returns of timber have been mailed to your address.

"I have the honour, &c.,

"GEORGE B. MARTIN,

"Chief Commissioner of L. & W.

"D. C. CORBIN, Esq., President Nelson and Ft.

"Sheppard Ry., Spokane, Wash."

"SPOKANE, January 29th, 1897.

"HON. GEO. B. MARTIN, Chief Commissioner

"Lands and Works, Victoria, B.C.

"SIR,—I acknowledge receipt of your letter of the 26th inst., and have carefully noted contents. The monthly accounts will be rendered promptly to the Timber Inspector at Vancouver as directed, and in the ordinary course he should receive these statements somewhere from the 8th to the 15th of the following month.

"My recollection is, that the law applies to lumber and cord-wood only. There are certain other things, such as timber used in mines for stalls and lagging, which I am inclined to think would be rated by the cord, possibly by the lineal foot. Will you let me know in regard to this?

"I trust that prompt notification of the arrangements made will be sent to persons who have paid royalty, so that no misunderstanding may occur, and in order that the business may proceed smoothly hereafter.

"The blank timbers returns have been received.

"Respectfully,

"D. C. CORBIN, *President.*"

Various delays occurred in bringing the matter before the courts. In the meantime, the company went on paying the royalty under the terms of the agreement. Subsequently, the government of which Mr. Martin was Chief Commissioner was defeated, and by reason of the many changes in the administration which have taken place in British Columbia since 1898, it was not convenient to get the matter before the courts, except by some adverse proceedings against the government, which the company were unwilling to institute except as a last resort.

The Kaslo and Slocan Company was incorporated by a similar Act of the local Legislature, and had a land subsidy in the same words as the Nelson and Fort Sheppard Railway Company. Its undertakings was completed and the lands were granted to the company.

The capital stock in both companies was subsequently acquired by representatives of the Great Northern Railway Company, and from that date the two local roads were operated as a part of the Great Northern system. The proceedings which afterwards took place with reference to timber royalties were by arrangement, carried on in the name of the Kaslo and Slocan Company, but it was understood that the decision in respect to one railway should operate as a settlement of the question in so far as both companies were concerned.

On the 27th June, 1900, the solicitor for the Kaslo and Slocan Company, addressed a communication to the Attorney General, laying the matter before him and requesting that some action should be taken. No satisfactory reply having been received, the solicitors of the railway company drafted a petition of right (which is annexed to this communication and marked as Exhibit 'A') and requested that a fiat should be granted. The solicitor for the company also came to Victoria and personally interviewed the Attorney General. He was informed by that official that the matter would be considered, and that if the Attorney General came to the conclusion that the contention of the company was well founded, there would be no necessity to go to the expense of a petition of right, as the government would refund the money without suit.

Nothing further was heard, however, from the Attorney General's department. In November, one Martin, a timber inspector for the district, demanded further payment of royalties from the company. This was refused, and the inspector then seized two of the company's engines and took possession of a round-house. The

solicitor for the Kaslo Company was at that time in Vancouver, and he interviewed the Attorney General and urged a decision on the question of the application for a petition of right. It was explained that it had not been possible to bring the matter to the attention of the Premier, but a decision was promised in ten days. The company waited for twenty-seven days, and having then received no reply from the Attorney General's department, issued a writ for trespass against the inspector personally. The statement of claim in the action was delivered on the 8th January, 1901. Ten days later an application was made to the judge to extend the time for defence, on the ground that it was necessary to consult the Attorney General. The extension of time was granted. A defence, prepared by the Attorney General's department, was delivered on the 8th of March, 1901. (Annexed hereto and marked Exhibits "B" and "C" are the statement of claim and the statement of defence as originally filed.)

The local legislature convened on the 21st of February, 1901. On the 2nd of March, 1901, Bill No. 7, introduced by the Attorney General, and which subsequently became the Act referred to in the first part of this letter, was read the first time. While this Bill was on the Order Paper for second reading, the following correspondence took place between the firm of Bodwell & Duff, representing the Nelson and Fort Sheppard Railway, (and who were acting in conjunction with the solicitor for the Kaslo and Slocan Railway) and the Attorney General:—

"VICTORIA, B.C., March 6th, 1901.

"SIR,—Our attention has been called to Bill No. 7 introduced by you, which amounts in fact to a declaration that the land subsidies given to the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company were always subject to the provisions of the Land Act respecting timber royalty.

"As you are aware, for some years past we have been endeavouring to get this matter before the courts in the form of a case stated for the opinion of the court as to the construction of the various land subsidy Acts. As we were unable to get the matter brought before the courts in that way, the Kaslo and Slocan Railway Company, a short time ago, refused to pay certain timber dues, in consequence of which one of the officials of the government seized certain property of the company, and we have brought an action against him for such act, in which the question of the construction of these Acts will come up for the consideration of the court. It was well understood between the government and us at the time that this was to be a test action, and the circumstances were arranged, so that the interpretation of the Act might be the subject of a decision of the court. In that condition of things, it certainly seems surprising that the Legislature should now attempt to interfere with this matter, and by an *ex post facto* law put a construction on the subsidy Acts, which may be different from that which the court will pronounce when the matter comes before it. You must know that very little value attaches to these land grants outside of the timber which is upon them, and that when the various Acts went through, there was no question in the minds of any of the parties to the transaction, but that the railway companies were obtaining the unrestricted right to the timber on these lands. It was a matter of considerable surprise to them when the government first proposed to collect the royalty, and at the instructions of the Nelson and Fort Sheppard we immediately applied to you, when you were formerly Attorney General, for the purpose of having a case stated in order to test the position. This, however, you did not see your way to do, and as the company did not wish to be involved in direct litigation with the government, and as it was thought that matters might be arranged later on, we went on paying the royalty under protest, and

with the idea of eventually testing the question in the manner we have indicated above.

"If it should be that our contention is correct,, and that this timber belongs to the companies, you will see that the present Act is in the nature of a confiscation by legislative declaration, of a property which has been given to the different railways for the purpose of assisting their undertaking. We are sure that the government would not propose any legislation of this kind, and we are bound to assume that the Bill has been introduced by you under some misapprehension as to the actual facts of the case, and on behalf of the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocum Railway Company, for whom we are acting, we have the honour to request that the government will consider this phase of the case before putting the Bill through the House, and make such amendments as will be necessary to protect the rights of the parties, if any.

"In this connection, we may mention that a few days ago we addressed a letter to the Chief Commissioner of Lands and Works on this very subject, requesting him to arrange a scheme by which purchasers from us could take the timber free of royalty, we agreeing to give security that in case the decision of the action now pending should support the government's contention, all royalties on timber cut in the meantime would be paid.

"We have, &c.,

"BODWELL & DUFF.

"VICTORIA, B.C., March 7th, 1901.

"Re Nelson and Fort Sheppard Railway Lands.

"SIR,—I herewith enclose copy of an official communication which I have sent to the Provincial Secretary.

"I have, &c.,

"E. V. BODWELL.

"To the Honourable the Attorney General,

"Victoria, B.C."

(ENCLOSURE):

"Re Timber Royalties on Nelson and Fort Sheppard Railway Lands.

"VICTORIA, B.C., March 7th, 1901.

"SIR,—Referring to the verbal interview which I had with the government yesterday, I beg now to inform you that I have, since returning to my office, looked up the correspondence in this matter as far as possible, and I find that in January, 1897, Mr. Corbin and the timber inspector, who was acting under instructions from the government, as our letters from them show, entered into an arrangement by which the Nelson & Fort Sheppard Railway Company should collect the timber dues and hand over to the government the proportion which the government claimed, it being understood, however, that the matter was to be brought before the courts, and that a refund of the money should be made by the government, if it were thereafter decided that the lands were not subject to royalties. The original document containing this agreement was forwarded by us to the Attorney General's department some time about the 15th or 16th of January, 1897, and will be found on record there; so that all collections made by the Nelson and Fort Sheppard Railway Company, and

all payments have been subjected to that arrangement. I also enclose a copy of an official communication signed by Mr. Martin, as Chief Commissioner of Lands and Works, which was forwarded to Mr. Corbin, in pursuance of the understanding to which I have referred, and which shows clearly the terms upon which the money was paid.

"I am sending a copy of this letter to the Attorney General.

"I have, &c.,

"E. V. BODWELL.

"To the Honourable the Provincial Secretary,

"Victoria, B.C."

NOTE.—The enclosure in the above letter was copy of letter addressed to Mr. D. C. Corbin by the Chief Commissioner of Lands and Works, dated January 26th, 1897.

"VICTORIA, B.C., March 7th, 1901.

"*Re Timber Dues—Nelson and Fort Sheppard Lands.*

"SIR,—We enclose copies of some correspondence in this matter which we had with you and Mr. Corbin. If you will follow this line in your office you will see that there was a clear arrangement made with us as to the question how the liability of the Nelson and Fort Sheppard Railway was to be settled, and also that in collecting the timber dues that company was doing so, under a well understood arrangement with the government.

"We have the honour to be, &c.,

"BODWELL & DUFF.

"To the Honourable, the Attorney General,

"Victoria, B.C."

"7th March, 1901.

"*Re Timber Dues on Kaslo and Slocan and Nelson and Fort Sheppard Lands.*

"SIRS,—I have the honour to acknowledge receipt of your communication of the 6th inst., respecting the Bill introduced by me, declaring that the lands granted to railway companies by the Lieutenant-Governor in Council in aid of the construction of certain railways in this province, have always been subject to the provisions of the Land Act, reserving a royalty to the Crown upon timber. It never was the intention of the government, or the legislature, to exempt railway lands from the timber royalty clauses of the Land Act. The government have always taken the position that this royalty should be paid, and from time to time have taken stringent measures to enforce payment. In my opinion, a fair construction of these subsidy Acts leads to the conclusion that these lands are subject to timber royalty, as on all other lands granted by the Crown since the year 1888. Any other construction would defeat the intention of the legislature, and the Crown would be deprived of an important source of revenue.

"I consider it quite proper for the legislature to reform the Acts authorizing railway subsidies, so that there will be no room whatever for doubt about the reservation of this royalty.

"You state that it was well understood between the government and your firm that the action of the Kaslo and Slocan Railway Company against J. R. Martin, one of the government collectors of timber royalty, was instituted as a test case. If by this statement you mean that the government authorized or encouraged, or was in any way a party to the bringing of this action, I must say I do not know on what it is based. I received no intimation from any source that this railway company contemplated proceedings against Mr. Martin. My first knowledge of the case was derived from a letter received at this department on the 3rd of January of this year, from the Provincial Timber Inspector, enclosing a copy of the writ served on Mr. Martin.

"I have, &c.,

"D. M. EBERTS,
"Attorney General.

"Messrs. BODWELL & DUFF, Barristers,
"Victoria, B.C."

"VICTORIA, B.C., March 7, 1901.

Re Timber Dues on Kaslo and Slocan and Nelson and Fort Sheppard Lands.

"SIR,—We have the honour to acknowledge receipt of your letter of the 7th of March, 1901.

"We cannot assent to the proposition that, because the government have always taken the position that these lands were subject to timber dues, therefore the present Act is a proper one to bring in. You must agree that the question is one to be decided by an interpretation of the former subsidy Acts, and that, as the matter is now pending in the courts, it is most improper to forestall the decision by a piece of legislation which gives an interpretation to these Acts at this date. The question, we think, is one of contract between the companies constructing the railways and the government. In consideration of that construction the government promised certain things; that promise was put into writing in the form of an Act which was passed by the legislature—on the faith of that Act the railway was built and full consideration for the contract paid by the companies in that way. The suggestion now is, that by the present legislation an interpretation is to be put upon that contract which may be different from the construction which the courts will place upon the Act in question. The intention of the parties must, like every other question in the matter of this kind, be determined by the language which they have used; the ideas which the parties had, outside of the language of the statute, cannot now be taken into consideration even if we could agree upon that point, which is impossible. From our knowledge of the situation, as solicitors for the Nelson and Fort Sheppard Railway Company, we know that the company has always contended that the intention was, that they should receive the timber free of dues, otherwise, as we have already pointed out, the land grant was of very little value. The government also should remember that land grant bonds have been sold to innocent parties on the faith of this transaction, and upon the construction which their solicitors advised them would be placed upon the subsidy Acts in question. Surely, it needs no argument on our part to convince you that to change this position now is most improper. The companies, of course, must take the Act as it reads, and if your contention is correct the courts will hold that the timber dues are payable by them, but if the court should hold otherwise you surely must agree that it is little short of confiscation of property, to pass an Act now which would compel the court to construe the Act according to your contention.

"We hope that you will be able to see the force of these views and comply with our suggestion to make such amendments as will protect whatever rights are already vested in the companies who have obtained lands under the subsidy Acts to which we have referred.

"We have, &c.,

"BODWELL & DUFF.

"To the Honourable the Attorney General,
"Victoria, B.C."

Notwithstanding the protests above referred to, the Bill above mentioned passed third reading and was assented to with the other Acts of the session.

On the 30th of April, 1901, a further defence was delivered in the action then pending in the Supreme Court of British Columbia against the Inspector Martin, in the following words:—

"1. Since the defendant delivered his statement of defence herein, an Act intituled "An Act respecting certain Railway Land Grants," was on the 25th day of April, A.D. 1901, enacted by the legislature of the Province of British Columbia, whereby it is declared and enacted that all grants of Crown lands made prior to the passing of the said Act to railway companies by the Lieutenant-Governor in Council in aid of or as a subsidy for construction of railways, were subject to the provisions of the Land Act with respect to the reservation of a royalty to the Crown upon all timber and other wood cut upon lands to be granted by the Crown, and with respect to the power conferred for the enforcement of said royalty and that said grants of land were subject to said provisions as from time to time amended and re-enacted, and are subject to said provisions as they appear in the Land Act and its amendments now in force."

The bonds which were issued for the construction of the Nelson and Fort Sheppard Railway were secured on the land grant as well as on the earnings of the road. A part of these bonds have been retired by the use of the proceeds of the sale of lands. There is now outstanding in the hands of *bona fide* holders bonds to the extent of \$1,293,000. The road has never earned more than its operating expenses, and the undertaking could not be sold on its merits for a sum sufficient to pay the outstanding bonds, and except for the land grant the bonds are of very little value.

There is not to exceed 30,000 acres of agricultural land in the whole grant; the balance of the land is mountainous, rocky and worthless, except for the timber upon it. It is estimated that there is about five hundred million feet of lumber upon the unsold portion as well as many thousand cords of wood. The value of the grant is diminished by the amount of royalty chargeable upon the timber and wood as above.

The Kaslo and Slocan Railway also is bonded and its securities are in the hands of *bona fide* holders. As in the case of the Nelson and Fort Sheppard Railway their value is dependent almost entirely upon the land grant. The amount of agricultural land is small, but there are many million feet of timber suitable for ordinary purposes and many thousand cords of wood.

We have the honour to request that you will consider whether the Act above referred to, namely, chapter 45 of the Act of last session of the local legislature of British Columbia, should not be disallowed on the ground that it has prevented a decision of the courts upon a question materially affecting Dominion interests. The Nelson and Fort Sheppard Railway is a Dominion-railway; it has been built and put into operation by money advanced upon securities which were issued upon the assumption that the lands in question were valuable, for the reason that the timber upon them was not subject to royalty. The ground upon which that contention is based is,

shortly, that the Land Act referred only to grants made by the Crown in the ordinary course of the administration of public lands, whereas, the lands in question were granted to the railway company in pursuance of special legislation, and it was not intended that the ordinary provisions of the Land Act should apply. Since, therefore, the special Act under which the lands were granted made no reservation of timber royalties the contention is, that they could not be subject to that duty by reason of the language of the general Land Act. It will be noticed also, that the Act passed at the last session of the legislature, against which we are now complaining, subjects the lands to duty upon props for mining purposes, shingle or other bolts of cedar and twenty-five cents a cord for all other wood. These provisions were not in force at the time the Subsidy Act was passed, but only became law in the year 1896, long after the railway was built and in operation. It is contended that it never could have been the intention of the railway company or the legislature to subject the lands in question to the provisions of the general law, which, as already seen above, is being amended from time to time with reference to timber upon ordinary ungranted lands of the Crown.

It is submitted that it would be improper to permit the local legislature to deal with the securities of a Dominion railway in the manner above referred to. If the principle is admitted that, after a railway has become subject to Dominion control, its assets can be impaired, to the detriment of the holders of its securities, at the will of the local legislature, it is possible to conceive of a case in which the undertaking would be completely destroyed by the caprice of the local authority, although it had been declared a work for the general advantage of Canada and should be maintained accordingly.

It is clear that the matter in question was the subject of a *bona fide* dispute, and that the government agreed that it should be submitted to the courts for consideration. The efforts of the company to have the question adjudicated upon in a friendly manner were counteracted by the delays interposed by the government and the inattention of the Attorney-General's department, and the companies were driven at last to enforce their rights in an ordinary action of trespass against a government official. While the action was pending in the courts, the legislature passed a special Act forestalling the decision, and preventing the company from obtaining a judicial construction of the contract upon which they had built the railway.

The amount involved is very large and entails serious consequences upon the company. We have the honour, therefore, to request that the matter may receive the attention of the executive and, if it is in accordance with the usual practice, the company request that they may be further heard verbally before the Governor in Council at a time and place which may be appointed for that purpose.

We have, &c.,

BODWELL & DUFF.

The Attorney General of British Columbia to the Minister of Justice.

ATTORNEY GENERAL'S OFFICE,

VICTORIA, December 20th, 1901.

SIR,—I have the honour to acknowledge the receipt of a letter bearing date September 16th last from your deputy, enclosing copy of certain correspondence addressed to you by Messrs. Bodwell and Duff, barristers of this city, urging the disallowance by the Dominion executive, of an Act passed at the last session of the British Columbia legislature, being chapter 45, of the statutes of 1901, and being intituled "An Act respecting certain Railway Land Grants." The disallowance of the Act is sought on the ground that it will compel the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company to pay to the govern-

ment of British Columbia a royalty upon timber cut upon the lands granted to said companies by the government in aid of the construction of said railways. The railway companies in question were incorporated by special Acts of the legislature of the province, and by other Acts the Lieutenant Governor in Council was empowered to grant to the companies certain lands as an aid towards the construction of said railways. I am personally aware of the facts in connection with the grant of said aid, and I know it was the intention of the legislature that the lands so granted should be subject to the land laws of the province respecting royalty upon timber. It may be that the intention of the legislature was not expressed as clearly as it might have been expressed, and therefore upon a narrow construction of the said Acts by the courts, the government might lose an important source of revenue from the lands of these companies. This is a purely local and domestic matter, to be dealt with by this legislature. It is essentially a question of the exemption of the timber products of certain railway aid lands from a species of taxation, in view of the way in which the royalty is reserved or imposed and from time to time changed by the legislature. If this legislature has no doubt about its intention, it seems to me it is quite proper for it to reform the terms in which that intention is expressed so as to render it impossible for the companies to take more than they should receive.

In this connection, permit me to draw your attention to subsection (41) of section 10, of chapter 1, of the Revised Statutes of this Province, intitled the "Interpretation Act of British Columbia." That subsection is as follows:—

"Every Act shall be so construed as to reserve to the legislature the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person or party whenever such repeal, amendment, revocation, restriction or modification is deemed by the legislature to be required for the public good."

You will, therefore, see that the legislature has merely exercised a reserved power which is as much a term of the said Aid Acts, as if it were expressly embodied therein.

I would also observe that any interference with the impugned legislation would have a most disastrous effect upon the revenues of the province, as thereby the government would be deprived of the great bulk of the royalty upon timber at present received, which constitutes a very considerable portion of the income of the province.

Messrs. Bodwell & Duff also seek your intervention on the ground that in 1893 a Dominion corporation called the Nelson and Fort Sheppard Railway Company was created by Chapter 57, of the Dominion Statutes of that year, and the said railway declared to be for the benefit of Canada. With that Dominion corporation the legislature of British Columbia had nothing whatever to do. The bonus was given to a provincial corporation. The provincial corporation is an entirely different legal entity from the Dominion corporation. This is a royalty reserved in respect of lands granted by the province to a company, and with respect to which lands the Dominion has not legislated at all. The fact of the Dominion declaring the railway to be for the general advantage of Canada would regulate the corporations status quo railway, and possibly the lands included in the right of way, but would not prevent the province from taxing those lands by way of royalty, or in any other way, or from moulding in any manner it deems for the public good, the aid the company shall receive. Even if we are now dealing with a Dominion corporation, the legislature of this province is certainly acting within the compass of its powers when it reforms one of its own Acts. You may say you do not approve of the policy of the Amending Act, and therefore you will disallow it, although it is *intra vires*. In my opinion the power to disallow *intra vires* legislation is a power which should be sparingly exercised. In this case the legislature has considered all the correspondence, facts and arguments submitted to you as a ground for disallowing the Act, and it has deliberately decided that it is for the public good that the Act should be on the statute book.

It seems to me the Dominion executive should not nullify the action of a provincial legislature acting within its powers, except where it runs counter to some general public policy, or to the legislation of the Dominion. The Dominion, apparently for reasons affecting Canada as a part of the empire, has adopted as its policy that Japanese shall be allowed to enter Canada on the same terms as other foreigners. To carry out its policy it has deemed it necessary to disallow the British Columbia Immigration Act, 1900. Although I disapprove of this particular exercise of the disallowance power, yet I can understand that the Dominion executive have overridden the *intra vires* legislation of this province pursuant to the dictates of what they have established as the public policy of Canada.

Should the Dominion Parliament enact an insolvency law I would consider it a proper exercise of this power to disallow any provincial statute which, although clearly *intra vires*, would interfere with the operation of the Federal legislation.

In the early days of Confederation the Dominion executive appear to have been imbued with the notion that the relation between the Dominion and the provinces was analogous to that existing between parent and child and to have acted accordingly. That view of the status of the provinces has been overthrown by a series of Imperial Privy Council decisions which have clearly established that the provinces, acting within the scope of their powers, are almost sovereign states, and that they are entitled to exercise all the prerogatives of the Crown not conferred upon the Dominion. The logical conclusion from these decisions is that the disallowance power is improperly exercised except in the cases I have above mentioned. Of late years the Dominion executive appear to have adopted this view. Although very strong arguments were advanced for the disallowance of the Jesuits Estates Act, yet the power was not exercised.

By chapter 13, of the statutes of 1888, the legislature of Manitoba enacted and declared that an agreement for public printing between Her Majesty the Queen, and Edward Trudel, was to be deemed cancelled as of the 1st day of February, 1888, and that there should be no claim against Her Majesty for damages or otherwise in connection with said agreement for any matter after said 1st day of February. A petition was presented to His Excellency the Governor General praying that said Act should be disallowed as being an invasion of a contractual right. In that case also the Dominion authorities declined to interfere.

I therefore most respectfully submit that the legislation complained of by the solicitors for the above-mentioned railway companies should not be disallowed by His Excellency the Governor General in Council.

I have the honour to be, &c.,

D. M. EBERTS,
Attorney General.

(Approved May 31, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, May, 16, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 45 of the Acts of British Columbia, 1 Edward (1901), intituled "An Act respecting certain railway land grants." This Act has already been mentioned in the report of the predecessor in office of the undersigned, dated December 31st last. The Act recites the intention of the legislature and the government, that grants of land which had been made to railway companies to aid in the construction of the railways, should be subject to the provisions of the Land Act and its amendments and re-enactments, reserving to the Crown a royalty upon timber and other wood, and conferring powers for the enforce-

ment of such royalty. It recites that it is desirable specifically to provide and declare that the Land Act applied and now applies to lands granted as aforesaid. It provides that all grants of Crown lands made to railway companies by the Lieutenant Governor in Council before the passing of the Act in aid of, or as a subsidy for, construction of railways were subject to the provisions of the Land Act with respect to the reservation of a royalty to the Crown upon all timber and other wood cut upon lands to be granted by the Crown, and with respect to the power conferred for the enforcement of such royalty. The Act declares that such grants of land were subject to the said provisions as from time to time amended and re-enacted and are subject to such provisions as they appear in the Land Act and its amendments in force at the passing of the Act. It further declares that the provisions reserving a royalty to the Crown are not to be considered as taxation within the meaning of any provision exempting a railway company or its property, real or personal, from taxation.

A further petition on behalf of the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company has been presented to the undersigned and the undersigned has heard counsel in behalf of the prayer of the petitioners for disallowance. Copy of the petition is submitted herewith.

The undersigned has attentively considered the allegations and grounds raised by the petitioners. The authority of the legislature to enact the statute in question is beyond dispute. Such authority is in fact not questioned. The undersigned does not consider it necessary to determine whether the Act is merely declaratory of the rights of the parties affected, as urged on behalf of the government of British Columbia, or whether it imposes burdens upon the lands in question to which they were not previously subject. The petitioning companies contend that under previous legislation, and by the grants under which they held, the timber and wood cut upon these lands was not subject to any tax or royalty, and that the imposition thereof as affected by the statute seriously diminishes the value of the property. It appears that litigation was pending between the government and the petitioners at the time of the passing of the Act with regard to the petitioners' liability to pay these royalties, and no doubt a very strong case is made out by the petitioners in support of the view that the legislature should have allowed the existing law to operate, and should not have undertaken to legislate so as to diminish or affect existing rights.

The undersigned cannot help expressing his disapprobation of measures of this character, but there is a difficulty about Your Excellency in Council giving relief in such cases without affirming a policy which requires Your Excellency's government to put itself to a large extent in the place of the legislature and judge of the propriety of its acts relating to matters committed by the constitution to the exclusive legislative authority of the province. So far as the Nelson and Fort Sheppard Railway is concerned, it is to be observed that there was a Dominion Act passed in 1893 declaring the railway to be a work for the general advantage of Canada, and its provincial charter was thereby confirmed by parliament. Afterwards the company mortgaged its railways and land grants to secure payment of its bonds, and the bondholders are now affected by the provincial statute in so far as it imposes a charge upon the property or the wood cut thereon which did not previously exist. The undersigned has considered whether the Act, therefore, should not be held to affect rights sanctioned by Dominion legislation and to interfere with the policy of the Dominion. He has concluded, however, that inasmuch as it is competent to the legislatures to tax the property of the Dominion corporations, and inasmuch as the Act respecting these railway land grants, if not declaratory, is a taxing act, it would not be proper for Your Excellency on that account to exercise the power of disallowance. The undersigned feels unable therefore to make any recommendation other than that the Act be left to such operation as it may have, and that a copy of this report, with a copy of the petition referred to, be transmitted to the Lieutenant Governor of British Columbia, with the recommendation on behalf of Your Excellency's government that the

matter be further considered with the view, if possible, to restore the rights of the petitioners as they existed previous to the passing of the Act, and upon the faith of which the expenditures of the companies are alleged to have been made and their obligations incurred.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 25 September, 1901)

DEPARTMENT OF JUSTICE, OTTAWA, 19th September, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 73 of the Acts of the legislative assembly of the province of British Columbia, passed in the first year of His Majesty's reign (1901), intitled:

"An Act to incorporate the Crow's Nest Southern Railway Company."

The company so incorporated, is by the terms of the Act authorized among other things to construct and operate a line of railway from Michel in the said province to a point therein, at or near the international boundary; also from that line to a point within the province at or near the easterly boundary thereof, and thence again by the route described in the statute to another point upon the easterly boundary of the province. The Act thus professes to confer authority upon the company to construct and operate railways connecting a point upon the boundary between British Columbia and the United States, with two points upon the boundary between British Columbia and the Northwest Territories. The power of a provincial legislature to authorize such works depends first upon the question whether these lines of railway ought to be regarded as local works or undertakings, and if so, secondly, whether they are not within the exception to provincial jurisdiction over local works and undertakings defined as "lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province," and thirdly, whether upon the fair construction of all the provisions of sections 91 and 92 of the British North America Act a provincial legislature can be held to have authority to provide for the construction and operation of railways running through the province and connecting the United States with the province and the other portions of the Dominion. It would seem to be certain that if the lines of railway in question occupied the same relation to two provinces of the Dominion which they do to the United States and the Northwest Territories, that the Act would be *ultra vires*, but the United States is a foreign country and the Northwest Territories are not a province, so that these undertakings do not fall within the letter of the express exception above quoted. It is doubtful, however, whether works making such connection can be considered local in their character, and, therefore, within the power conferred. It is observed also that parliament has been given exclusive power to legislate with regard to ferries between a province and a British or foreign country, or between two provinces; that lines of steamships between any British or foreign country are excepted from provincial powers, and having regard to the intention and scope of the section defining the respective authority of parliament and the legislature, it would seem to be anomalous that a legislature should authorize the construction of lines of railway such as those in question.

Similar objections have heretofore been stated with regard to provincial railways touching the international or provincial boundaries, but it has not been considered in such cases that the public interest demanded disallowance, because of the facilities

afforded for raising these questions in the court where they may be judicially determined.

Section 23 of the Act provides that "no aliens shall be employed on the railway during construction unless it be demonstrated to the satisfaction of the Lieutenant Governor in Council that the work cannot be proceeded with without the employment of such aliens."

This provision is manifestly *ultra vires*, and therefore, harmless, and inasmuch as the undersigned has come to the conclusion that he ought not to recommend disallowance for the other reasons stated in this report, he does not consider it expedient to do so, because of the obvious invalidity of this provision relating to aliens.

The undersigned recommends, therefore, that the statute be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia and to the president of the said company for their information.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Approved 10 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 26th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the British Columbia Fisheries Act, 1901, 1 Edward VII., chapter 25, intituled: "An Act respecting the fisheries of British Columbia."

It is enacted by section 9 that: "The Board of Fishery Commissioners, with the approval and authority of the Lieutenant-Governor in Council, may from time to time make regulations for the better management, conservation and regulation of all fisheries in respect of which the legislature of British Columbia has authority to legislate, to prevent or remedy the destruction and pollution of streams, to regulate and prevent fishing, to prevent the destruction of fish, and to forbid fishing except under the authority of leases or licenses, and may from time to time vary, amend, alter or repeal all and every such regulation as may be found necessary or deemed expedient for the purpose of carrying the provisions of this Act into effect, and all regulations so made shall have the same force and effect as if herein contained and enacted; and every offence against any such regulation may be stated as having been made in contravention of this Act, notwithstanding that such regulations extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing, or the times specified as prohibited or close seasons."

Section 12 provides that no person shall fish for, take, catch or kill from or in provincial waters, except so far as may be necessary to secure a supply for his own use, by any means other than angling, any fish which inhabits such waters without first having obtained a lease or license signed by the commissioners or their deputies.

Section 13 prohibits any person without lawful excuse from buying, selling or possessing any fish caught or killed in provincial waters at a time or in a manner prohibited by law.

Section 14 authorizes the commissioners to issue fishing leases or licenses for fisheries and fishing, to be carried on in provincial waters, subject always to such regulations, conditions and restrictions as may from time to time be made, ordered, established or fixed in that behalf, by the commissioners, approved by the Lieutenant Governor in Council.

Section 19 empowers the board of commissioners to appoint guardians to prevent the taking or killing of fish by illegal means or in an illegal manner or at prohibited times.

Section 27 provides that no fish or fish spawn shall be taken in any manner from provincial waters for the purpose of stocking, artificial breeding or for scientific purposes without a written permit from the commissioners.

Section 28 requires every person fishing in provincial waters to permit the inspection and examination of the fish taken by him or in his possession and the implements by which the fish were taken, and authorizes search if the person refuses to allow such inspection and examination.

Section 32 empowers the fishery commissioners to determine where the nets may be set, and the distances to be maintained between each and every location of nets.

Section 33 requires nets to be marked with the name of the owner or owners.

Section 34 authorizes the local fishery overseer to determine disputes relative to the position and use of nets and other fishing apparatus.

Section 36 prohibits common carriers or other persons from having in possession or shipping or transporting any fish caught within the province at a time or in a manner prohibited by law.

Section 53 provides that special licenses and leases for any term of years may be granted by the board of commissioners to any person who wishes to plant or form oyster beds in any of the bays, inlets, harbours, creeks or rivers of the province, and that the holder of any such lease or license shall have the exclusive right of the oysters produced or found on the beds within the limits of such lease or license.

Section 59 enacts a penalty against any person who shall set up, use or employ any fish-trap, stationary net, or other device of a like nature for the taking of salmon, or who shall take or kill any salmon by any such means in provincial waters.

It is provided that this Act and the regulations under it shall apply to all fishing and rights of fishing, and all matters relating thereto in respect of which the legislature of British Columbia has authority to legislate for the purposes of this Act. The terms "water" or "waters" or "provincial water" or "provincial waters" are defined to mean and include "such of the waters of the sea or of any bay or inlet of the sea, or of any lake, river, stream or water course wholly or partially within the province, over or in respect of which the legislature of this province has authority to legislate for the purpose of this Act, and whether flowing over or covering Crown lands or not, but shall not include any waters in which fish are propagated and preserved by the owner or tenant of the land covered by such waters."

The undersigned has referred to Section 53 because it authorizes the Board of Commissioners to grant special licenses and leases to plant oyster beds in the harbours of the province. These so far as they are public harbours belong to the Dominion and are not subject to provincial legislative authority. The section is, therefore, to that extent *ultra vires*.

The remaining sections above mentioned and perhaps some of the other provisions of the Act are objectionable as being fishery regulations. This Act is not unlike the Act respecting the fisheries of Ontario, 63 Victoria, Chapter 50, as amended by the Ontario Act of 1901, a number of the provisions in question having apparently been copied from these Acts. In his report upon the Ontario Acts, approved by Your Excellency on 11th May last, the undersigned stated that "it has been finally determined that the enactment of fishery regulations and restrictions is within the exclusive competence of parliament and not within the province of provincial legislatures. The kind of legislation which the provinces may pass with respect to fisheries under their authority over property and civil rights or the management and sale of public lands, has also been indicated by the Judicial Committee. It refers to property, its disposition and the rights to be enjoyed with respect to property, and it is expressly held that such legislative authority does not extend to any restrictions or limitations by which public rights or fishing are sought to be limited or controlled. The undersigned stated that he would have considered it necessary to recommend disallowance of both these Acts were it not for the fact that the local government had expressed its willingness to make further amendments at the next session of the legislature to repeal the objectionable provisions, and Your Excellency's Government received a formal

assurance from the Government of Ontario that such amendments would be made. The undersigned considers that the particular provisions of the statute now in question to which he has referred, are principally regulations controlling or relating to the manner or times of fishing, the appliances with which fish may be taken, or the manner of disposing of them, having in view the prohibition of the unlawful taking or killing of fish. Large powers are also conferred upon the fishery commissioners, with the approval of the Lieutenant-Governor in Council, to make regulations respecting the fisheries. These provisions cannot in the opinion of the undersigned be upheld upon any principle arising out of the proprietary interest of the province or the local control over property and civil rights. The authority of the legislatures is very clearly established by the decision of the Judicial Committee in the fisheries case, and the undersigned considers that they should not transgress the limits which have been judicially declared. He considers that the sections which he has mentioned should be either repealed or amended so that they may not affect or authorize the regulation of the fisheries, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor with a request that he inform Your Excellency's Government as soon as convenient whether the Act will be so amended within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Approved 17 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following statutes of British Columbia, passed in the 1st year of His Majesty's reign (1901), viz.:—

Chapter 32, "An Act to authorize the loan of five million dollars for the purpose of aiding the construction of railways and other public works."

Section 10 of this Act authorizes the Lieutenant-Governor in Council to enter into agreements with any person or company undertaking the construction of any railway to which a subsidy is hereby attached, which may be necessary or convenient for the due construction and operation of such railway, which agreements shall, in every instance, in addition to other matters therein provided for, contain the provisions set forth in the said section. These include among others the following:—

"(e) That the Lieutenant-Governor in Council shall have absolute control of the freight and passenger rates to be charged by the railway, and that, notwithstanding, and in the event of the railway being or becoming subject to the jurisdiction of the Dominion Government, the same shall be assumed by the company, and shall be deemed a contract between the province and the company."

"(i) That no aliens shall be employed on the railway during construction, unless it is demonstrated to the satisfaction of the Lieutenant-Governor in Council that the work cannot be proceeded with without the employment of such aliens."

Chapter 65, "An Act to amend the 'Arrowhead and Kootenay Railway Company Act, 1898.'"

Chapter 69, "An Act to incorporate the Coast-Kootenay Railway Company, Limited."

Chapter 70, "An Act to amend the 'Columbia and Western Railway Company Act, 1896.'"

Chapter 71, "An Act to incorporate the Comox and Cape Scott Railway Company."

Chapter 72, "An Act to incorporate the Crawford Bay Railway Company."

Chapter 77, "An Act to incorporate the Imperial Pacific Railway Company."

Chapter 78, "An Act to incorporate the Kamloops and Atlin Railway Company."

Chapter 79, "An Act to incorporate the Kootenay Central Railway Company."

Chapter 81, "An Act to incorporate the Midway and Vernon Railway Company."

Chapter 83, "An Act to incorporate the Queen Charlotte Islands Railway Company."

Chapter 84, "An Act to incorporate the Vancouver and Grand Forks Railway Company."

Chapter 85, "An Act to incorporate the Victoria Terminal Railway and Ferry Company;" and

Chapter 87, "An Act to incorporate the Yale-Northern Railway Company."

Each of these statutes contains a provision in effect that no aliens shall be employed on the railway during construction unless it is demonstrated to the satisfaction of the Lieutenant-Governor in Council that the work cannot be proceeded with without the employment of such aliens. Each of these statutes contains the further provision that the Act shall not come into force and effect until such time as the company shall give security to the satisfaction of the Governor in Council.

"(1) That the Lieutenant-Governor in Council shall have the right from time to time to fix maximum rates for freight and passenger traffic, and the company shall not charge rates higher than those fixed.

"(2) That in the event of Dominion legislation bringing this railway company under the exclusive jurisdiction of the parliament of Canada, the foregoing conditions shall be carried out by the company so incorporated, as a contract and obligation of said company, prior to any other charge thereon."

Chapter 68, intituled "An Act to incorporate the Chilkat and Klehini Railway and Navigation Company," and

Chapter 80, intituled "An Act to incorporate the Lake Bennett Railway."

Each of these chapters contains the provision above quoted with regard to the security to be given to the satisfaction of the Lieutenant-Governor in Council regarding the fixing of maximum rates, but they do not contain the clause with respect to aliens.

Chapter 85. In addition to the objectionable clauses which have been stated, this Act contains a provision empowering the company to adopt and carry into effect the draft agreement recited in and incorporated with a Bill passed by the municipal council of the City of Victoria, copy of which is set forth in the schedule to the Act. This agreement provides among other things that no Chinese or Japanese person shall be employed on any of the works or undertakings agreed to be carried out by the company, or in the operation of such undertakings after construction, and in the event of any such Chinese or Japanese person being so employed, the company shall forfeit and pay to the corporation the sum of \$50 per day for every person so employed.

Chapter 86, "An Act empowering the corporation of the city of Victoria to lease the market building premises and otherwise carry into effect the 'Victoria Terminal Railway By-law, 1900.'"

This statute declares that the Victoria Terminal Railway By-law 1900, which is the by-law already referred to, was duly passed, and shall be absolutely valid and binding upon the corporation according to the terms thereof, and the council is empowered to carry out and give force and effect to all the provisions, agreements, stipulations and conditions in the said by-law set forth. The by-law recites the agreement containing the clause with respect to Chinese or Japanese already mentioned.

Dealing first with the provisions above quoted with regard to the Lieutenant-Governor in Council fixing maximum rates for freight and passenger traffic, and what shall happen in the event of Dominion legislation bringing these railway companies under the exclusive jurisdiction of parliament, the undersigned has difficulty in understanding what is intended by the legislature. The words have already been quoted. They would have to be construed having regard to the Dominion legislation whatever it might be, affecting the company, if its railway were brought under the exclusive juris-

diction of parliament. In so far as, consistently with such legislation, the provincial statute incorporating the company might operate, the original charter would probably remain in operation, and the provision in question would give it no additional effect. In so far, however, as it is attempted to follow these companies into Dominion jurisdiction, and govern them by provincial enactment intended to come into effect after they have passed beyond the authority of the province, the legislation can, in the opinion of the undersigned, have no effect.

The undersigned has already stated his view upon such legislation with regard to a similar clause in the British Columbia Acts of 1889, *vide* report of undersigned approved by Your Excellency on 14th December, 1899. So long as these railways are subject to local jurisdiction there can be no objection to the clause now in question. It is not necessary to consider whether or not parliament is likely to take any action in the matter. It is certain that if at any time these railways should fall within the exclusive jurisdiction of parliament, previously existing enactments with regard to them can have effect only in so far as parliament intends, and, therefore, whatever the construction of these clauses or the intention of the legislature with regard to them may be, it seems to the undersigned harmless so far as Dominion interests are concerned. The undersigned would not, therefore, recommend disallowance of any of these Acts upon the ground solely that they contain the clauses upon which he has already commented.

The undersigned has received a communication from the Japanese Consul at Vancouver objecting to the clause above quoted with respect to aliens, particularly with regard to the legislation respecting the Victoria Terminal Railway and Ferry Company, and he points to the clause respecting the Japanese contained in the agreement set forth in the above-mentioned by-law. It is unnecessary for the undersigned to review here the correspondence which has taken place during the last three years between the Imperial government, Your Excellency's government and the government of British Columbia with regard to legislation respecting the Japanese. A number of statutes have been disallowed, and the government and legislature of the province are well aware of the policy of Your Excellency's government with regard to such legislation and the reasons for it. Heretofore exception has been made with respect to Acts incorporating private companies because of the inconvenience which might arise if these statutes were disallowed after the companies had been organized and commenced operations, but in the report of the undersigned, approved 24th April, 1900, to Your Excellency in Council, the undersigned referring to the disallowance of previous Acts of British Columbia for the same reason, and to the Acts then under review, stated: "Inasmuch, however, as certain statutes of British Columbia were disallowed in 1899 on account of provisions attempting to render illegal the employment of Japanese, and as certain other statutes will, if this report be approved, soon be disallowed for the same reason, the undersigned considers that by the time of another session of the legislature it will be safe to hold that the views of Her Majesty's government and of this government with regard to anti-Japanese legislation, are generally and sufficiently understood in British Columbia, and, therefore, it may well be considered, in case of this objectionable section appearing in future Acts of incorporation, or Acts affecting private companies, that these companies Acts ought not to have exceptional treatment. The applicants may be held to have obtained the legislation at their own risk, and persons dealing with corporations incorporated by charters attempting to impose disabilities upon aliens may also be held to have acted with notice of the views entertained by Your Excellency's government, and of the action which would probably be taken with respect to such measures."

A copy of this report was duly communicated to the provincial government, and in face of the warning so given, the undersigned does not consider that any further exception should be made. The statutes now in question contain all the objectionable provisions which led to the disallowance of the former Acts. The objections are in the present instance more serious, inasmuch as not only Japanese, but all aliens,

are disqualified from employment to the extent mentioned in these Acts. The subject of aliens is clearly within the exclusive authority of parliament.

Immigration is also within Dominion jurisdiction, and it has been, and is, the policy of Your Excellency's government to promote immigration, large sums of money being annually expended from the Dominion treasury to that end. The efforts of Your Excellency's government would, however, be certainly paralyzed if the immigrant, upon coming to Canada, is to find the way of employment closed to him by provincial legislation. The policy of these enactments is so contrary to that of Your Excellency's government, and the enactments themselves so manifestly *ultra vires*, that the undersigned considers that no course is open to Your Excellency's government, consistently with the public interest, but the exercise of the power of disallowance, unless, indeed, the provincial legislature repeal these provisions,

The undersigned, therefore, recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, with a request that he inform Your Excellency's government as soon as convenient whether these Acts will be amended within the time limited for disallowance by repealing the clauses affecting aliens, and further as to the legislation respecting the Victoria Terminal Railway and Ferry Company, by reforming the by-law and agreement therein referred to, so as to do away with the provisions relating to Japanese.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

(Approved 10 January, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, December 27, 1901.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the Revenue Tax Act, 1901, of the statutes of British Columbia, 1 Edward VII, chapter 46, intituled "An Act to provide for the collection of a tax on persons."

This Act requires every male person, as defined by the Act, in the province of British Columbia to pay an annual revenue tax of \$3, subject to be increased as provided by the Act, which tax is to fall due from and after January 2nd in each year, and shall be payable in advance for the use of His Majesty in the right of the province. It is provided, however, that every merchant, farmer, trader or employer of labour shall on demand of the assessor and collector pay the annual tax for every male person in his employ, not only at the time when said demand is made, but also from time to time for every male person in his employ during the year for which the tax is payable, and may deduct the amount so paid on account of any such male person from the amount of salary or wages due or to become due to any such male person upon the production or delivery of the receipt of such tax for such person. It is provided that every such merchant, farmer, trader or employer of labour shall be primarily liable for the said tax in respect of every male person in his employ, and that he shall be liable to all the provisions of the Act with regard to such persons in his employ.

It is not clear to the undersigned whether in the case of an employee the statute intends that payment should be enforced directly against him. Express provision is, however, made for enforcing payment of the tax imposed in respect of such employee against the employer.

It seems clear to the undersigned that this method of taxation, so far as the employer in respect of those in his employ is concerned, is not direct taxation. The power of a local legislature to tax arises under the 2nd and 9th enumerations of section 92 of the British North America Act, viz.: "(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes;" and "(9) Shop, saloon, tavern and

auctioneer, and other licenses in order to the raising of a revenue for provincial, local or municipal purposes." No question of licenses is involved in this Act, and, therefore, in so far as the Act authorizes indirect taxation, it is *ultra vires*. A definition quoted by the highest judicial authority as embodying an understanding of the most obvious indicia of direct and indirect taxation, which is a common understanding, and likely to have been present to the minds of those who passed the Act of Union, is the definition of John Stuart Mill, as follows: "Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another."

The project of taxing the employer in respect of his employees, and authorizing him to withhold the amount of the tax so paid from the wages due to the employee, is not one by which the tax is demanded from the persons who it is intended or desired should pay it, but rather by which the tax is demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another. It would be perhaps hard to find a more apt illustration of a tax indirectly levied than that furnished by this legislation. The undersigned entertains no doubt that sections 5, 6 and 7, and the other provisions of the Act affecting the employer of labour as such should be repealed, and he recommends that inquiry be made of the provincial government upon communication of a copy of this report as to whether such amendments will be made within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Companies' Act, 1897, amendment Act, 1901, of British Columbia, I Edward VII, chapter 10, intituled: "An Act to amend the 'Companies' Act, 1897.'"

Section 2 is as follows: "The term 'Extra-provincial Company,' under the 'Companies' Act, 1897,' shall be deemed to have included and shall include every corporation, company, association or society incorporated under any Investment and Loan Societies Act, Loan Corporation Act, or Building Societies Act, or any similar Act thereto of the United Kingdom, or of the Dominion of Canada, or of the late province of Canada, or of any province of Canada (excepting the province of British Columbia), and having gain for its purpose and object, and being empowered to lend money to others than its members only, and any such corporation, company, association or society having obtained a license under said 'Companies' Act, 1897,' shall not be deemed to come within the 'Extra-provincial Investment and Loan Societies Act, 1900.'"

Section 3 provides that the fee to be paid by any such corporation, company, association or society for such license shall be \$250.

Section 4 enacts that on or about 1st March in each year every corporation, company, association or society mentioned in section 2 licensed under the Companies' Act, 1897, shall file in the office of the Provincial Secretary a copy of every return or statement required to be made during the preceding year by the Act, statute, ordinance or other provision of law under which it was incorporated or is governed, and in default shall be liable to a penalty not exceeding \$25 for every day during which such default continues. So far as this latter provision is concerned it is, in the opinion of the undersigned, not justified in the execution of any power of taxation vested in the legislature.

If a Dominion company be by its charter or Act of incorporation required to file returns at the office of the Provincial Secretary, it must be subject in case of default to the Dominion legislation applying in such cases, but a provincial legislature is not authorized to provide any additional sanction, nor is it authorized as a measure of taxation, to impose a penalty for not filing returns upon which the tax does not in anywise depend.

While not disputing the power of a legislature to tax a company incorporated by the Parliament of Canada, the undersigned considers that Dominion companies ought not to be subject to differential treatment; and that it is the duty of Your Excellency's government to see that taxes are not imposed for provincial purposes upon Dominion companies where the like taxes are not in similar cases imposed upon provincial companies. This Act, ought, therefore, to be amended by repealing section 4, and by either repealing sections 2 and 3 or amending them so as to provide that no license, fee or tax shall be imposed or exigible under the statute as against a Dominion corporation except in so far as under the like circumstances, a similar tax or license fee is similarly chargeable by the law of British Columbia as against companies incorporated by or under the authority of a statute of that province.

The undersigned has the honour to recommend that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, with a request that he inform Your Excellency's government as soon as convenient whether this Act will be so amended within the time limited for disallowance.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 10 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 28th December, 1901.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a communication from Mr. R. F. Tolmie, Secretary of the British Columbia Mining Association, inclosing a petition (copy herewith) addressed to Your Excellency, from the British Columbia Mining Association, praying for the disallowance of chapter 37 of the statutes of British Columbia, 1901, intituled: "An Act to amend the 'Inspection of Metalliferous Mines Act' and amending Act."

The undersigned recommends that a copy of the petition and of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, requesting that his government express their views upon the matter for the information of Your Excellency's government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Petition of the British Columbia Mining Association to His Excellency the Governor General in Council re Chapter 37

To His Excellency the Governor General in Council:

The petition of the British Columbia Mining Association sheweth as follows:—

1. That under and by virtue of the provisions of section 9 of Bill No. 28, entitled: "An Act to amend the inspection of Metalliferous Mines Act and amending Act," passed at the last session of the Legislative Assembly of the province of British

Columbia, it is provided, General Rule 8, as set for in section 25 of the said Act is hereby repealed and the following substituted therefor: In every mine where hoisting is employed either for the carriage of persons or minerals, the following code of mine signals should be used: (Here follows the schedule as set out in the said Bill).

2. That this association took occasion before the passing of the said Act by the Legislative Assembly of British Columbia to protest against the passing of said Bill for the following reasons amongst others:

(a.) That in the opinion of the members of this association no good reason presents itself for repealing General Rule 8, as set forth in section 25 of the Mines Metalliferous Inspection Act, being chapter 61, revised statutes of British Columbia, and to make the additions provided for in section 9 of the said Bill No. 28, will only lead to confusion and consequently to accidents.

(b.) That in the opinion of the members of this association such opinion being based on long and wide experience—it is impossible to devise by legislation a uniform code of signals adaptable to all mines without interfering with safety and efficiency.

(c.) That from the many years of mining experience which the members of this association have had in different parts of the world, they are unable to recall any accidents in mines that would have been prevented by the adoption of a uniform code of signals. In the opinion of the members of this association the addition to the code provided for by section 9 of said Bill No. 28, will not in any way increase the safety of operating cages and skips, but on the contrary, by their complex nature and undue length they will be so dangerous that their use will be out of the question, having due regard to the safety of employees.

(d.) That in the absence of any demand being made upon the government for the changes in the law contemplated by section 9 of said Bill No. 28, the members of this association are at a loss to understand why such unworkable conditions should be imposed upon mine operators, especially in view of the fact that from the experience of the members of this association, no legalized code of mine signals of such an extensive nature as that provided for in section 9 of Bill No. 28 has been ever found beneficial or tended to the safety of employees.

3. That by section 25 of said chapter 134, revised statutes of British Columbia, it is provided that "The following general rules shall, so far as may be reasonably practicable, be observed in every mine to which this Act applies." In the opinion of the members of this association—and they state the same here as a matter of fact, based upon long years of experience, the code of mine signals set out and provided in said section 9 of Bill No. 28 cannot be observed in the mines to which the said Act applies, as the same are not reasonably practicable.

Your petitioners, therefore, pray that for the reasons above stated the said Bill No. 28, being "An Act to amend the Inspection of Metalliferous Mines Act and amending Act," be disallowed by Your Excellency in Council.

And your petitioners as in duty bound will ever pray,

THE BRITISH COLUMBIA MINING ASSOCIATION,

Per R. F. TOLMIE,
General Secretary

(Approved 10 May, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1920.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 80 of the statutes of British Columbia, passed in the first year of His Majesty's reign, 1901, and intituled "An Act to incorporate the Lake Bennett Railway Company." Reference has already been made to this Act in a report upon these statutes by the predecessor in

office of the Undersigned. It is provided by section 3 that the company may lay out, construct and operate a railway from a point at or near the headquarters of Dyea River, to a point at or near Lake Bennett, thence to the 60th parallel of latitude. The undersigned observes that the territory between the ocean and that region which is proposed to be traversed by the line of railway thus chartered is now in dispute between the United States and the Dominion of Canada, and it is considered inexpedient pending the settlement of that dispute to permit the construction of railways which may complicate and increase the difficulty already existing. The authority of a provincial legislature over railways is limited to such as are local in their character, and which do not connect the province with any other or others of the provinces, or extend beyond the limits of the province. It is, in the opinion of the undersigned, therefore, very doubtful whether it is competent to the legislature of British Columbia to authorize the construction of this railway from the Dyea River to the northern boundary of the province, and the attempt to keep the traffic of such a railway under the control of the local government, notwithstanding any legislation of parliament upon the subject, is also objectionable. These two provisions construed together may furnish reason for disallowance of the Act, but in addition to these reasons the undersigned does not consider it in the public interest, or consistent with the policy of Your Excellency's government that the Act should remain in operation.

He recommends, therefore, that it be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, and to Mr. King, who is named as one of the incorporators of the company, for their information.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Chapter 30 disallowed accordingly on 10th May, 1902.

(Approved 12 June, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 9th June, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to the despatch of the Lieutenant Governor of British Columbia of 29th ultimo, observes that with regard to chapter 46 of the British Columbia Act, 1901, intituled: "An Act to provide for the collection of a tax on persons," the provincial government refers to correspondence with the undersigned. The Attorney General of British Columbia wrote Mr. Mills on 31st January last, referring to Mr. Mills' report to Your Excellency upon this statute of 27th December, 1901. The Attorney General stated as follows:—

"These provisions in almost their present form were first enacted by sections 6, 7 and 8, chapter 24 of 1881, and afterwards re-enacted by sections 8 and 9 of chapter 110 of the consolidated statutes of 1888, and by sections 5, 6 and 7 of chapter 167 of the revised statutes of 1897.

"You will, therefore, see that this legislation is not new, and that on three occasions the Dominion executive have allowed it to go into effect.

"I have no doubt that these provisions were first devised to facilitate the collection of poll tax from the Chinese. As you are no doubt aware, we have in this province quite a large number of Chinese and Japanese labourers. It is almost impossible to identify these men, and so they can evade payment of this tax. Very few of them possess any property that can be reached, so the only way to compel them to contribute towards the revenue of the province is by a poll tax collectable through their employers.

"I feel confident that you are not inclined to throw any unnecessary obstacles in the way of our compelling these people to contribute a reasonable amount towards the maintenance of government in the province in which they make the money which they forthwith export to China.

"In your report I notice you make this observation: 'It is not clear to the undersigned whether in the case of an employee the statute intends that payment should be enforced directly against him.' I submit it is reasonably clear that a collector may proceed either against the employer or the employee for the amount of the tax. Section 3 imposes the tax upon every male person and subsection (3) of section 5, in my opinion recognizes the liability of the employee to pay the tax, and provides that in the event of his doing so, any liability of the employer shall cease. I would strongly urge upon you this view of the statute, that it imposes a direct tax upon every male above a certain age; that his liability to pay does not cease upon being employed by another, but that in that event by a statutory attachment of the 'salary or wages due or to become due to such male person' (S. 5, subsection 1) the employer becomes liable, out of such salary or wages, to pay the debt due to the Crown by the employee, and that the employers payment of the tax discharges *pro tanto* his liability to his employee.

"I consider it quite competent for a provincial legislature to enact that all moneys due or to become due from an employer shall be attached until a tax debt due from the employee to the Crown or to a municipality shall have been discharged, and that out of such moneys the employer shall pay the tax.

"It may be that all the provisions of the Act are not as well drawn as they might be, but I submit that the above is a fair interpretation to put upon the statute as a whole. You lay stress in your report upon the clause in subsection (1) of section 5, that 'Every such merchant, farmer, trader or employer of labour, shall be primarily liable for the said tax in respect of every male person in his employ at any time during the year for which said tax is payable, and until the tax is paid in respect of such person.' That clause it seems to me may be fairly interpreted to refer to the employers' liability as garnishee and to be a direction to the collector to have recourse in the first instance to the employer instead of wasting time and money collecting from the employees.

"If you cannot adopt this view, I am prepared to submit legislation either repealing the clause or making it clear that it has the meaning I attribute to it. As the dis-allowance of this Act or the striking out from it of the attachment provisions would seriously affect our already inadequate revenue, I ask that you reconsider the Act, and that you do not have it disallowed at least until I fail to remove your objections to it."

The undersigned having considered these observations of the Attorney General thereupon, the Deputy Minister of Justice, by direction of the undersigned, wrote Mr. Eberts under date of February 21st last as follows:—

"Referring to your letter of 31st ultimo, addressed to Mr. Mills, with regard to the Revenue Tax Act, 1901, of British Columbia, I observe that there has been similar legislation in force in British Columbia since 1881, and I am not aware that any question has come before the courts with regard to it. It would seem, therefore, that the people of the province must have largely acquiesced in the enforcement of these provisions. The Minister, however, entertains no doubt that they are *ultra vires* to the extent stated in his predecessor's report, approved on 10th ultimo. Any employer objecting to the validity of the Act may, of course, conveniently have the question determined by the courts, and in view of the fact which you state, that previous statutes were not disallowed, he is not inclined to recommend extreme measures with regard to the present Act. He thinks, however, that it would be worth while

for you to consider whether a more constitutional means cannot be devised for ensuring the collection of the tax, as it is not unlikely, particularly as attention has now been called to the invalidity of the statute, that litigation may arise which will involve the province in costs, and otherwise prove embarrassing. Awaiting a reply to the official despatch, the Minister does not propose at present to make any further recommendation to His Excellency."

The undersigned, considering the communication of the Attorney General and the aforesaid reply, and for the reasons therein stated, recommends that the Act in question be left to such operation as it may have.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 12 June, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, June 9th, 1902.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a despatch of the Lieutenant Governor of British Columbia, dated 29th ultimo, transmitting a copy of a minute of the Executive Council of that province, dated 28th ultimo, approving a report of the Attorney General with regard to certain statutes passed by the Provincial Legislature, 1901, to which objections have been raised by Your Excellency's Government.

The undersigned observes that as to the following statutes the provincial government recommend the amendments suggested by Your Excellency's Government as alternatives to disallowance, viz.:—

Chapter 10, "An Act to amend the Companies Act, 1897;"

Chapter 25, "An Act respecting the fisheries of British Columbia;"

Chapter 32, "An Act to authorize a loan of five million dollars for the purpose of aiding the construction of railways and other public works;"

Chapter 65, "An Act to amend the Arrowhead and Kootenay Railway Company. Act, 1898;"

Chapter 69, "An Act to incorporate the Coast Kootenay Railway Company, Limited;"

Chapter 70, "An Act to amend the Columbia and Western Railway Company Act, 1895;"

Chapter 71, "An Act to incorporate the Commox and Cape Scott Railway Company;"

Chapter 72, "An Act to incorporate the Crawford Bay Railway Company;"

Chapter 77, "An Act to incorporate the Imperial Pacific Railway Company;"

Chapter 78, "An Act to incorporate the Kamloops and Atlin Railway Company;"

Chapter 79, "An Act to incorporate the Kootenay Central Railway;"

Chapter 81, "An Act to incorporate the Midway and Vernon Railway;"

Chapter 83, "An Act to incorporate the Queen Charlotte Islands Railway Company;"

Chapter 84, "An Act to incorporate the Vancouver and Grand Forks Railway Company;"

Chapter 87, "An Act to incorporate the Yale Northern Railway Company."

The time for disallowance of these statutes will expire on 23rd instant. The legislature of British Columbia has been for some time in session, yet it does not appear from the despatch that the amending Acts have been passed, although it is distinctly stated that the provincial government recommends such amendments.

The undersigned considers that Your Excellency's government should have a definite assurance previous to 23rd instant, that these recommendations have been carried into effect, and he recommends with regard to the various Acts above mentioned that a telegraph despatch be sent to the Lieutenant Governor of British Columbia, acknowledging his despatch of 29th ultimo, with the inclosures, stating that the power of disallowance will not be exercised if the amendments proposed are sanctioned within the time limited for disallowance; that the matter is, however, of so much consequence that the action of the legislature cannot be permitted to remain in doubt, and that it will be necessary for Your Excellency's government to take further action unless on or before the 23rd instant Your Excellency's government is advised that the necessary amendments have been finally passed.

Chapter 68, "An Act to incorporate the Chilkat and Klehini Railway and Navigation Company," and

Chapter 80, "An Act to incorporate the Lake Bennett Railway Company."

The latter of these Acts has recently been disallowed for the reasons stated in a previous report of the undersigned.

As to Chapter 68, the undersigned has nothing to add to the report of his predecessor of 27th December last.

Chapter 85, "An Act to incorporate the Victoria Terminal Railway and Ferry Company," and

Chapter 86, "An Act empowering the corporation of the city of Victoria to lease the market building premises and otherwise carry into effect the Victoria Terminal By-law, 1900."

With regard to these two Acts, it is stated in the provincial despatch that the Attorney General has requested the council of the city of Victoria to advise him what action the city propose to take towards reforming the agreements and by-laws so as to render them unobjectionable to the undersigned, and that as this matter has not as yet been dealt with by the council of Victoria, the Attorney General is not in a position to make any recommendations respecting these Acts.

The undersigned observes that chapter 85 contains a clause respecting aliens, the same as that contained in the other Acts of incorporation hereinbefore enumerated, and the reasons which have led the provincial government to recommend the repeal of that clause in other Acts of incorporation, apply equally to the present case. There is the further objection, both to this chapter and chapter 86, that the agreement and by-law ratifying the same which are referred to in both statutes, provide that no Chinese or Japanese person shall be employed upon the works of the company.

The undersigned would be satisfied to leave these Acts to their operation if section 25 of chapter 85 were repealed, and if an amendment were made affecting both these statutes, declaring that nothing in either Act contained should impose any statutory disability upon the company to employ Japanese. The action to be taken by the legislature does not, therefore, in the opinion of the undersigned depend upon the council of the city of Victoria, and he considers that this view should be communicated by telegraph to the Lieutenant Governor, with the request to inform Your Excellency's government within the time limited for disallowance, whether such amendments have been made.

Chapter 37: 'An Act to amend the Inspection of Metalliferous Mines Act and amending Act.'

The British Columbia Mining Association petitioned against this Act upon the grounds stated in their petition, a copy of which was submitted to Your Excellency, with the report of the predecessor of the undersigned of 28th December last. The statute provides for the appointment of inspectors of mines, requires reports and returns to be made to the provincial government respecting accidents and the working of the mines, &c., and establishes a code of signals for use in the working of the mines. It also limits the employment of engineers to eight hours per day. The objection of the British Columbia Mining Association relate to the code of signals, which is said not to be reasonably practicable. This legislation is so clearly competent to the

province that the undersigned feels that Your Excellency cannot do more than represent the views of the association to the provincial government. That has been already done, and it is stated by the provincial despatch that it is so clear that this legislation should not be interfered with, that the provincial government does not recommend its amendment or repeal.

The undersigned considers, therefore, that this matter must be left in the hands of the local authorities, and he recommends that the petitioners be so informed.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his government.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 20 June, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 12th June, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 9th instant, has the honour to state that in accordance with the recommendations therein made, the Secretary of State has telegraphed to the Lieutenant-Governor of British Columbia and received his reply, which has been referred to the undersigned. The Lieutenant-Governor states as follows: "My government will not amend chapters 85 and 86 unless requested by municipal council of Victoria. Bills have been introduced to carry out recommended amendments to chapters 10, 25, 32, 65, 69, 70, 71, 72, 77, 78, 79, 81, 83, 84, and 87. My government will undertake that said bills will certainly be passed at present session so far as they can give an undertaking respecting action of legislature."

The undersigned considers that Your Excellency may properly accept the assurance so given by the Lieutenant-Governor that the Acts mentioned other than chapters 85 and 86, will be satisfactorily amended at the present session of the legislature, and he recommends, therefore, that none of these Acts be disallowed.

As to chapters 85 and 86, it is to be observed that the provincial government decline to promote any amendment unless requested by the municipal council of Victoria. The undersigned has already pointed out that the action which the government and legislature of British Columbia ought to take does not depend upon any request from the municipal council, and he would, in view of the correspondence, recommend the disallowance of these two Acts, were it not for the fact that it is represented to the undersigned that the Victoria Terminal Railway and Ferry Company has already constructed its works, or a large portion thereof, that it has acquired rights and expended a large amount of capital upon the faith of the agreement with the city, and the two statutes in question, and it would, therefore, lead to very great hardship and expense, as well as some confusion of interests, in which innocent persons might suffer, if these Acts were disallowed. Further, the undersigned entertains no doubt that the clause constituting the objection to the legislation is clearly *ultra vires*, and cannot legally affect the rights or capacity of aliens or Japanese or others, against whom it may be nominally directed. For these exceptional reasons, the undersigned considers that chapters 85 and 86 may be left to such operation as they may have, notwithstanding the probability, which appears very great, that the legislature will not make the suggested amendments. The non-disallowance of these Acts should not, however, be regarded as a precedent or urged in support of any discrimination in favour of future Acts of incorporation containing these or similar objectionable clauses, the general intention of Your Excellency's government being for the future to make

no exception in the disallowance of statutes of British Columbia affecting aliens generally or specially directed against the Japanese.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

2 EDWARD VII, 1902

3rd Session—9th Legislature.

Japanese Consul General to the Governor General.

IMPERIAL CONSULATE GENERAL OF JAPAN, June 25th, 1902.

SIR, YOUR EXCELLENCY,—In the name of His Imperial Japanese Majesty's government, I have the honour to call Your Excellency's serious attention to the following Bills that were passed by the British Columbia Legislative Assembly during the session which is just over, and to which assent was given on the 23rd instant by His Honour the Lieutenant-Governor of the province, viz:—

1st. The Bill entitled "An Act to further amend the Coal Mines Regulation Act."

According to the report made to me by His Imperial Majesty's consul at Vancouver, the said Bill has taken the form of re-enacting rule 34 of section 82 of chapter 138 of the revised statutes of British Columbia, with the addition to the said rule of the word "Japanese" inserted after the word "Chinaman."

This rule, therefore, reads as follows: "Rule 34. No Chinaman, Japanese, or person unable to speak English, shall be appointed to or shall occupy any position of trust or responsibility in or about a mine, subject to this Act, whereby through his ignorance, carelessness or negligence he might endanger the life or limb of any person employed in or about a mine, viz., as bankman, onsetter, signalman, brakeman, pointsman, furnaceman, engineer, or be employed below ground or at the windlass of a sinking pit."

This rule, as Your Excellency is already aware of, as it appeared in the revised statutes of British Columbia, that is, without the present addition of the word "Japanese," was disallowed practically by the decision rendered by the Privy Council of Great Britain, which decided on an appeal taken from the decision of the full court of the province of British Columbia, as follows:—

"That an enactment by a provincial legislature that no Chinaman shall be employed in mines is beyond its competence, inasmuch as by the British North America Act, 1867, section 91, subsection 25, legislation with respect to naturalization and aliens is reserved exclusively for the parliament of the Dominion of Canada." Relying on this decision of the highest tribunal of the British Empire, the present Bill must surely be *ultra vires* of the powers of the legislative assembly of British Columbia, as the word "Japanese" as added is only variation in the originally disallowed rule 34.

2nd. The Bill No. 14: An Act relating to the employment on works carried on under franchises granted by private Acts, with one section added, as follows:—

"(1) The Lieutenant-Governor in Council may appoint the chief of the provincial police and any provincial police constable or other persons as officers to carry out and enforce the provisions of this Act."

The provisions of this Act are the same, with the exception of last section 10, as given above, which has been added, as that Act passed as Chapter 14, 1900, Statutes of British Columbia, and entitled:—

“An Act relating to the employment on works carried on under franchises granted by Private Acts.” This Act of chapter 14, 1900, was disallowed on September 11th, 1901, by Your Excellency.

The section 14 above referred to will prejudicially effect the number of Japanese settlers in the province, as it prohibits employment of any Japanese who are unable to read the Act in a language of Europe, on any of the works specified under this section, and besides there is every reason to believe that this section is deliberately meant against the employment of Japanese people only, as it is not a test of the language of the province, the English language, for any other European language is admitted for the test.

3rd. Insertion of these clauses in all private Bills which tend to the exclusion of the employment of Japanese labour, and particularly these clauses which are being added to the various railway Bills, notably section 4 of the Pacific Northern and Omenica Railway Company Bill, which discriminates against Japanese in particular.

4th. A resolution moved by a member of British Columbia legislature on the 10th April and carried on 15th of the same month, as follows:—

“That all contracts, leases and concessions of whatsoever kind entered into, issued or made by the government or on behalf of the government, provision be made that no Chinese or Japanese shall be employed in connection therewith.”

Pursuant to this resolution the Japanese consul at Vancouver reports special licenses are now being issued to which are attached a condition that no Chinese or Japanese shall be employed thereon.

It seems that this new clause has not been passed by a general Act of the Legislative Assembly, but the condition has been attached by the authority of section 50 of chapter 113 of the revised statutes of British Columbia, 1897, in which the Chief Commissioners of Lands and Works may grant licenses, to be called special licenses, subject to such conditions, regulations and restrictions as may from time to time be established by the Lieutenant-Governor in Council.

Whether this be an Act or simply a resolution empowered by an Act, either its practical effect or with regard to its being constitutional or not, but in any case there is no doubt that it is the legislation which affects the questions of aliens, similar to that which was at stake in the case of *Bryden vs. the Union Colliery Co. of British Columbia*, in which it was decided by the Privy Council of Great Britain in July, 1890, that such legislation was distinctly unconstitutional. While this clause is unconstitutional, the Japanese residents in the province will materially suffer from the steps taken, as they are entirely prohibited from being engaged on timber limits and in work connected with the timber licenses and a large number of them will consequently be thrown out of work and from their living, which they peacefully enjoyed for a number of years.

5th. Bill introduced into the British Columbia legislature by the Minister of Mines of the same provincial government, entitled “An Act to regulate Immigration into British Columbia.”

This Bill is practically the same as the one that was introduced at a former session of the legislature, but was disallowed by Your Excellency’s government.

The object of this Act is similar to the former one, inasmuch as it is aimed obviously and solely at the exclusion of the Japanese from the province, since by subsection (f) the Chinese are exempt from the provisions of the Act.

My protest, as stated in the foregoing paragraph, will apply to this last and most serious one with even stronger force, as should this Bill come into force, the Japanese

will be totally deprived of their treaty right of free entry into Canada through their international highway, both by land and water, and the province of British Columbia will virtually mean to shut herself against the people of Japan. These high-handed measures, pursued on the part of the British Columbia legislature, are almost an infringement of the treaty stipulations between the two most friendly powers concerned. Besides, it is manifest that such legislation is far from being constitutional, as the province is not entitled to have jurisdiction over the questions which involve the welfare and interests of aliens and immigrants, such power wholly resting with the Dominion government. Your Excellency is doubtless aware that the Imperial Japanese government has been voluntarily restricting the emigration of their labourers into Canada for the past two years, for the sole reason to avoid any friction that might occur by allowing them to come into British Columbia, and to cause any ill-feeling among a certain class of people there.

That the fact that the voluntary course thus taken by the Japanese government has proved so very effective is fully proved by the Royal Commissioners appointed by Your Excellency's government.

The commissioners state in their report, published as follows: "Your commissioners fully appreciate the action taken by the government of Japan on August 2, 1900, whereby the governors of the prefectures of Japan were instructed to prohibit entirely for the time being the emigration of Japanese labourers for the Dominion of Canada, &c., &c.

"The course adopted by the Japanese government, if we may without presumption be permitted to say so, is most opportune, eliminating all causes of friction and irritation between Canada and Japan, and so favouring a freer trade and intercourse between the countries than could otherwise obtain."

"Nothing further is needed to settle this most difficult question upon a firm basis than some assurance that the action already taken by the government of Japan be revoked."

"Your commissioners desire to express their earnest hope that in the continuance of this friendly policy, legislation on this subject by the Canadian government may be rendered."

While your commissioners thus highly appreciate the measures taken by the government of Japan, and strongly recommend to your government that there should be no legislation enacted against the immigration of Japanese subjects into Canada, I am at a loss to find out why the British Columbia government should again pass the legislation above referred, which was disallowed by Your Excellency only six months ago.

I shall not argue any further on the subject, as all these Bills above referred to are merely repetitions of the Bills either passed by the British Columbia legislature in previous sessions, or disallowed by Your Excellency within only the last six months, and still more as they were so thoroughly and ably argued by my predecessor in office, Hon. S. Shiunger, on previous occasions, that I have very little to add to his argument.

Before, however, concluding this note of official protest, I have further honour of requesting Your Excellency in behalf of His Imperial Japanese Majesty's government, that you will take speedy steps that these obnoxious Bills, particularly that relating to the Japanese immigration, be disallowed, before it shall come into force, as this legislation even for a moment if left in force, will most injuriously interfere with the free movement of all classes of Japanese in general, the consequence of it will eventually lead to jeopardizing of trade relations between Japan and Canada, in which British Columbia is particularly interested.

While I trust that Your Excellency's government should similarly be ready to use on this occasion the same enlightenment and impartial policy which has on previous occasions been extended to the legislation of this kind, they will also take into

consideration that on account of the recent treaty, the people of the countries on both sides of the Pacific—the Empire of Japan and Dominion of Canada—should enter into closer union and have better understanding.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

I have, &c.,

TATSZGORO NOSSE.

The Japanese Consul General to the Governor General.

IMPERIAL CONSULATE GENERAL OF JAPAN,

MONTREAL, August 11th, 1902.

SIR, YOUR EXCELLENCY,—I had the honour of addressing to Your Excellency in previous despatch, under date of June 26th, which copy is herewith accompanied, in relation to several Bills and resolutions as per enclosures marked A, B and C and D, which were passed in the British Columbia legislature during the last session, and assent was given later on by the Lieutenant Governor of the said province.

The Imperial Japanese Consul in British Columbia reports that since the laws above referred to had been enforced in that province, the Japanese people are practically debarred from the full enjoyment of their rights and privileges under the vigorous prosecution of such laws and regulations in hands of the provincial officers. What most affects their rights and interests are the laws practically prohibiting their free entry into the province and preventing their employment on works carried on under franchises granted by private Acts, &c., and it is now proven so very obnoxious to our countrymen, that they can no longer stand the enforcement of these laws.

I beg leave, therefore, to call Your Excellency's attention to the fact that I am in receipt of a cable instruction from the Imperial Minister of State for Foreign Affairs in Tokio, that I should appeal to the good-will of your government and ask them to have these obnoxious laws disallowed, on the ground that the immigration law recently enacted proves not only disadvantageous to Japanese subjects, but also contrary to Canadian constitution, and that the Imperial government of Japan are extremely surprised at such actions being taken in spite of severe restrictions they had put since 1900 upon immigration of their people into Canada.

I have, in accordance to the instructions above referred to, the honour of transmitting the earnest desire of my government to Your Excellency's government, and at the same time trusting that your government will lose no time in having these laws disallowed at an early date.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

I have, &c.,

TATSZGORO NOSSE.

May 12th, 1902.

*The Japanese Consul to the Chief Commissioner of Lands and Works of B.C.
Re Conditions Attached to Timber Licenses Excluding Employment of Oriental
Labourers.*

DEAR SIR,—According to a report of the Vancouver *Daily Province* of May 12th, special permits are being issued to which are attached a special condition as follows: "This permit is granted on the special condition that no Chinese or Japanese shall be employed in working the said limits mentioned in this permit."

The *Province* goes on to state that this new clause was not passed by the general Act of the legislative assembly, but must have been ordered by the Lieutenant Governor in Council, and that the authority for so doing is contained in section 50 of the Land Act revised statutes and amendments to the end of 1901. I see by reference to section 50 of chapter 113 revised statutes of British Columbia, 1897, that the Chief Commissioner of Lands and Works may grant licenses to be called special licenses, subject to such conditions, regulations and restrictions as may from time to time be established by the Lieutenant-Governor in Council, and of which notice may be given in the British Columbia *Gazette*.

I have looked over the *Gazette* of May 1st, May 8th, and May 15th, but have been unable to find the notice referred to, would you kindly furnish me with the information as follows:—

1. If these conditions regarding the employment of Japanese labourers are now attached to the timber licenses which are issued?

2. If it is pursuant to the section 50 referred to the chapter 113 revised statutes of British Columbia, or if a special Act has since been passed by the legislature.

3. If a notice has been given by the Lieutenant-Governor in Council, could you please give me the date and page of the *Gazette* in which the said notice is contained?

Hoping I am not giving you undue trouble, and trust you can favour me with an early reply.

I have, &c.,

S. P. SACKO,

*Chancellor in charge of His Imperial Japanese Majesty's Consulate, Vancouver, B.C.
The Chief Commissioner of Lands and Works of B.C. to Japanese Consul.*

LANDS AND WORKS DEPARTMENT, VICTORIA, May 27th, 1902.

SIR,—I have the honour to acknowledge the receipt of your letter of the 22nd instant, and in reply to your inquiry, I beg to say that the condition respecting the non-employment of Chinese and Japanese, attached to the special licenses to cut timber, was made pursuant to a resolution of the legislative assembly of this province now in session.

I have, &c.,

W. C. WELLS,

Chief. Commr. of L. & W.

Hon. S. P. SACKO,

Chancellor in charge of His Imperial Japanese Majesty's Consulate,
Victoria, B.C.

(Approved 5 December, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 14th November, 1902.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the following statutes of the legislature of British Columbia, passed during the second year of His Majesty's reign (1902), and received by the Secretary of State for Canada on the 29th day of September last:—

Chapter 34, "An Act to regulate Immigration into British Columbia."

Chapter 38, "An Act relating to the employment on works carried on under franchises granted by Private Acts."

Chapter 48, "An Act to further amend the 'Coal Mines Regulation Act.'"

Chapter 34 is a re-enactment of Chapter 11, 64 Victoria, of the Statutes of British Columbia.

Chapter 38 is a re-enactment of Chapter 14, 64 Victoria, of the Statutes of British Columbia,

These statutes as originally enacted were disallowed by order of Your Excellency in Council of 11th September, 1901, for the reasons stated therein, and the reasons stated in the report of the Minister of Justice of 5th January, 1901.

Upon the same grounds the undersigned considers that these statutes as now re-enacted should be disallowed.

Chapter 48 amends the Coal Mines Regulation Act, Revised Statutes, 1897, by repealing rule 34 of section 82, and substituting therefor a rule in all respects the same, except that the substituted rule expressly excludes Japanese from being appointed to or occupying the positions therein mentioned. This enactment in so far as it affects Japanese, either as aliens or as naturalized British subjects, is *ultra vires* under the decision of the Judicial Committee of the Privy Council, in the case of the Union Colliery Company of British Columbia *vs.* Bryden, 1889, Appeal Cases, 580. It is also an example of discriminating legislation such as has been on several occasions during the last few years disallowed by Your Excellency's Government, as incompetent to a provincial legislature or upon grounds of public policy. The reasons which prevail for the disallowance of such measures are well understood.

The undersigned does not consider that any useful purpose would be served by correspondence with regard to these statutes, and he recommends that each of them be disallowed.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

Chapters 34, 38 and 48, were accordingly disallowed 5th December, 1902.

EXTRACT from a report dated 24th November, 1902, approved 12th December, 1902:

These acts were received by the Secretary of State for Canada on 29th September last:—

Chapter 26, "An Act to amend the British Columbia Fisheries Act, 1901."

In recommending that this Act be left to its operation, the undersigned does not intend to admit that all its provisions are *intra vires*. The British Columbia Fisheries Act of 1901 contained a number of objectionable provisions on account of which the Act would have been disallowed, but for the undertaking of the provincial government to obtain proper amendments. The amendments as passed appear in the Act now in question, and they no doubt remove many of the objections to the former Act. They do not, however, go to the extent which the undersigned would have urged if he had had an opportunity to consider the amendments within the time limited for disallowance of the Act of 1901. The undersigned considers, however, that the provisions of the present Act may have operation within the scope of the authority committed to provincial legislatures, and in so far as there may be any attempt to administer the Act, so as to give an *ultra vires* effect, the courts would no doubt afford an easy remedy.

Chapter 27, "An Act to amend the 'Bush Fire Act.'"

Section 3 states requirements for the prevention of fires as to all locomotive engines used on any railway which passes through any fire district. These requirements are not unreasonable, and perhaps not in excess of those prescribed in such cases by the common law, but the undersigned desires to point out that the legislation must be construed as limited to railways within the legislative authority of the province, and that it cannot affect Dominion railways.

Chapter 34, "An Act to regulate immigration into British Columbia."

Chapter 38, "An Act relating to the employment on works carried on under franchises granted by private Acts."

Chapter 48, "An Act to further amend the 'Coal Mines Regulation Act.'"

The undersigned has by a previous report recommended the disallowance of each of these Statutes.

Chapter 39, "An Act to regulate the employment of labour upon subsidized works."

Chapter 40, "An Act to amend the 'Liquor Licenses Act, 1900,'"

Chapter 53, "An Act to prohibit aliens from voting at municipal elections."

The undersigned will submit a future report upon each of these statutes.

Chapter 74, "An Act respecting compensation to workmen for accidental injuries suffered in the course of their employment."

This is a workman's compensation Act affecting the liability of the employer for accidents caused to workmen arising in the course of their employment. Section 9 provides that the Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown, to which this Act would apply if the employer were a private person. The use of the words "naval or military" in this section suggests that it is intended to affect not only the Crown in the right of the province, but also the Dominion Crown. The undersigned apprehends that it is incompetent to a provincial legislature to so legislate as to impose a liability upon the Crown in the right of Canada, and that in so far as this Act is intended to have that effect, it is *ultra vires*. The courts may, however, very well determine this point if raised, and the undersigned does not on that account recommend the disallowance of the Act which relates in the main to matters within the legislative control of the province.

C. FITZPATRICK,

Minister of Justice.

(Approved 26 May, 1903)

DEPARTMENT OF JUSTICE, OTTAWA, May 18th, 1903.

To His Excellency the Governor General in Council:

The undersigned has under further consideration the following statutes of the province of British Columbia passed in the second year of His Majesty's reign, one thousand nine hundred and two, namely:—

Chapter 39, "An Act to regulate the employment of labour upon subsidized works."

Chapter 40, "An Act to amend the Liquor License Act, 1900."

Chapter 53, "An Act to prohibit aliens from voting at municipal elections."

The undersigned was not prepared to make any recommendation with regard to these Acts at the time of reporting upon the other Acts passed during the session of 1902, because it seemed desirable to await the result of litigation then pending which involved a question relating to the authority of the legislature to pass such Acts as these. The question having since been determined favourably to the province, and it not appearing to the undersigned that these Acts are *ultra vires* of the legislature or so far in conflict with Dominion policy as to justify their disallowance, the undersigned recommends that they be left to such operation as they may have.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice

(Approved 15 June, 1903)

DEPARTMENT OF JUSTICE, OTTAWA, May 26th, 1903.

To His Excellency the Governor General in Council:

The undersigned has received a communication from Mr. G. G. S. Lindsey, K.C., of Toronto, transmitting a memorandum prepared by Mr. A. G. Galt, K.C., of Rossland, respecting chapter 66 of the British Columbia Statutes of 2 Edward VII, (1902) intituled: "An Act to amend the law relating to Trade Unions."

It is urged that the Act should be disallowed for the reasons stated in Mr. Galt's memorandum, copy of which is submitted herewith.

It is argued that the statute is *ultra vires* as affecting the regulation of trade and commerce, and aliens, and that it is in conflict with the Trades Unions Act of Canada.

The undersigned has carefully considered these grounds and what is alleged in support of the application for disallowance. The Act is not, however, in the opinion of the undersigned, so clearly *ultra vires* as to justify its disallowance. The reasons urged against the Act may all be raised in the courts and for these reasons he recommends that the Act be left to such operation as it may have, and that Mr. Lindsey be informed accordingly.

Humbly submitted,

C. FITZPATRICK,

*Minister of Justice.**Mr. A. G. Galt, K.C., to G. G. S. Lindsey, K.C., re Chapter 66.*

ROSSLAND, B.C., March 25th, 1903.

DEAR SIR,—I desire to draw your attention to certain very injurious legislation which was enacted by the legislature of British Columbia last year, and which may probably be got rid of by disallowance, if appropriate steps are taken promptly.

The Act I allude to is "An Act to amend the law relating to Trade Unions," and being chapter 66 of the statutes of 1902.

It is so short and so full of harmful provisions that I will set it before you in full, as follows:—

"(Chap. 66.) An Act to amend the law relating to Trade Unions. (21st June, 1902.)

"His Majesty, by and with the advice and consent of the Legislative Assembly of the province of British Columbia, enacts as follows:—

"1. No trade union nor any combination of workmen or employees in British Columbia, nor the trustees of any such union or combination in their representative capacity shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lock-out or trade or labour dispute, unless the members of such union or combination, or its council, committee or other governing body, acting within the authority or jurisdiction given such council, committee or other governing body by the rules, regulations or directions of such union or combination or the resolutions or directions of its members resident in the locality, or a majority thereof, shall have authorized, or shall have been a concurring party in such wrongful act.

"2. No such trade union or association shall be enjoined, nor shall any officer, member, agent or servant of such union or association or any other person be enjoined, nor shall it or its funds, nor any such officer, member, agent, servant, or other person, be made liable in damages for communicating to any

workman, artisan, labourer, employee or person, facts respecting employment or hiring by or with any employer, producer or consumer or distributor of the products of labour or the purchase of such products or for persuading or endeavouring to persuade by fair or reasonable argument, without unlawful threats, intimidation or other unlawful acts, such last named workman, artisan, labourer, employee or person, at the expiration of any existing contract, not to renew the same with or to refuse to become the employee or customer of any such employer, producer, consumer, or distributor of the products of labour.

"3. No such trade union or association or its officers, member, agent or servant, or other person, shall be enjoined or liable in damages, nor shall its funds be liable in damages for publishing information with regard to a strike or lock-out, or proposed or expected strike or lock-out, or other labour grievance or trouble, or for warning workmen, artisans, labourers or employees or other persons against seeking or urging workmen, artisans, labourers, employees or other persons not to seek employment in the locality affected by such strike, lock-out, labour grievance or trouble, or from purchasing, buying or consuming products produced or distributed by the employer of labour party to such strike, lock-out, labour grievance or trouble, during its continuance."

Under section 1 no trade union nor its trustees are to be liable unless under circumstances which would be almost incapable of proof.

As I read the section it is a *sine qua non* that the governing body must be shown to be "acting within the authority or jurisdiction given such governing body by the rules, &c."

It is well known that trade unions are very careful to so frame their rules as to leave out any provisions which might be used against them.

The intention of the framers of this Act was to do away with the effect of the celebrated Taff Vale case (1901 A.C. 426) and *Quinn vs. Lathin*, 1901, A.C. 495, which finally decided that trade unions are liable, like every one else, in respect to their wrongful acts.

British Columbia is a hot-bed of unionism, and it is advisable to preserve all possible means of protection to our industries, by injunction or otherwise, as occasion might require.

I think the Dominion Government might well be urged to disallow the British Columbia statute upon the following grounds:—

REASONS FOR DISALLOWANCE.

1. Prompt action is desirable and necessary.

The Provincial Legislature has no power to amend the Dominion law. See *Dobie vs. The Temporalities Board* 7 App. Cas. 136.

The provincial statute interferes with and contravenes an existing Act of the Dominion Parliament. The law relating to trade unions, as it existed at the date of the statute, is contained in the Dominion Trade Unions Act, 35 Vic., cap. 30. (R.S.C., cap. 131.)

This Dominion Act was intended to supersede the former common law, and is almost a transcript of the Trade Union Act of Great Britain, passed prior to the Dominion Act. This has been recognized in our highest Canadian court, as will be seen from the following extract from the case of *Perrault vs. Gauthier*, 28 S.C.R. at page 253.

"The English courts have had, therefore, several occasions to consider these statutes, which have been reproduced in our Canadian Statute Book; and finally the House of Lords has pronounced on them not only once, but twice, in 1897 in *Allen vs. Flood* (1898 A.C. 1), and in 1892 in the *Mogul Steamship Company vs. McGregor* (1892 A.C. 25), and we have no hesitation in saying that its jurisprudence is binding upon us in a case like the present one."

There is one noticeable variation from the English statute, contained in section 5, of the Dominion Act, providing that "this Act shall not apply to any trade union not registered under this Act."

The Dominion Act, of course, applies to all the provinces, and covers the whole field of legislation on the subject. But this British Columbia statute professes to amend the law, and its provisions are wholly at variance with the Dominion Act.

For example, the British Columbia statute draws no distinction between trade unions which have registered and those which have not done so; and it thereby frees from liability a number of clearly illegal bodies, and takes away from the employers of labour the reasonable protection, by way of injunction and otherwise, which the law afforded them.

No doubt the invalidity of the provincial statute might be claimed in any legal proceeding before our courts, without any disallowance, but the serious objection to relying upon this mode of relief is that, when the occasion arises, by reason of a strike or other disturbance, the remedy must be prompt, or it is almost wholly useless.

So long as the statute remains on the statute book an applicant for an injunction or other summary relief, must succeed in convincing the court, or other judicial officer, that the statute is *ultra vires* of the legislature, and, of course, the question would be contested vigorously by the opposite party, and it would be necessary to give to the attorneys general of the Dominion and the province, an opportunity of attending the proceedings. All this would mean such a loss of time that prompt action would be impossible, and thereby the protection to which all persons are entitled by law would be practically denied.

2. The provincial statute interferes with the jurisdiction of the Dominion regarding "the regulation of trade and commerce."

In this connection it is to be remembered that trade unions throughout the province of Canada do not restrict their membership or operations to any particular province nor even to Canada.

It is well known that several strikes have occurred in Canada that were initiated by American trade unions, whose membership or affiliation extended into Canada. Here in British Columbia we have been the victims of several strikes, initiated and supported by an American trade union known as the Western Federation of Miners. This organization has formed branches throughout British Columbia, and the members are all bound by the rules and instructions of the head office in Denver, Colorado.

The strike which occurred in Rossland in 1901, whereby all our mines were closed for about six months, was initiated in Denver and engineered by officers of the American union.

Recent disastrous strikes in the coal mines on Vancouver Island, and at Fernie, have all been carried out by this same Western Federation of Miners.

In further illustration of the view that the law affecting trade unions falls under "Trade and Commerce," I would point out that all of our gold, silver, lead and copper ores and a large amount of our coal is exported from British Columbia to the United States and elsewhere. Now these industries in this and other provinces of the Dominion are intimately connected with the Miners' Unions, all of which, as I understand, are branches of, or affiliated with, the above-mentioned Western Federation of Miners at Denver, Colorado.

3. The rights and disabilities of "aliens."

This is another feature of this trade union question as it exists in British Columbia which ought to be considered.

A very large proportion of the members of our trade unions are aliens from the States. They are here only temporarily, and they bring their union with them in order that they may not be "black-listed" when they return across the line. During the strike at Rossland the strange spectacle occurred of a determined effort on the

part of these American aliens, to enforce our Canadian alien labour law against good Canadian labourers coming in from other provinces of the Dominion.

For these reasons it appears to me the disallowance of the provincial statute would settle a great grievance, felt by all who are exposed to the illegal actions of men who have really no stake in the country.

Yours faithfully,

A. C. GALT.

3 EDWARD VII, 1903

4th SESSION—9th LEGISLATURE.

(Approved 23 March, 1904).

DEPARTMENT OF JUSTICE, OTTAWA, 5th June, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration an Act of the legislature of the province of British Columbia, passed at the last session thereof, and assented to by the Lieutenant Governor on 4th May, 1903, intituled: "An Act relating to the employment on works carried on under franchises granted by private Acts," the same having been received by the Secretary of State for Canada on 15th May last.

The undersigned observes that this Act corresponds with chapter 38 of the British Columbia statutes, 1902, bearing the same title which was disallowed by order of Your Excellency in Council, approved on 5th December, 1902. A similar Act passed in the year 1901 was disallowed by order of Your Excellency in Council on 11th September, 1901.

Upon the grounds stated for the disallowance of the previous corresponding Acts, the undersigned recommends that the Act now in question be disallowed.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 23 and 26 March, 1904).

DEPARTMENT OF JUSTICE, OTTAWA, 1st October, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following Acts of the legislature of the province of British Columbia, passed at the last session thereof, viz.:—

Chapter 12, intituled: "An Act to regulate immigration into British Columbia."

Chapter 14, intituled: "An Act relating to the employment on works carried on under franchises granted by private Acts;" and

Chapter 17, intituled: "An Act further to amend the Coal Mines Regulation Act."

These Acts correspond with chapters 34, 38 and 48, bearing the same titles, which were disallowed on the report of the undersigned of 14th November, 1902, approved by Your Excellency on 5th December, 1902.

Upon the grounds stated in the said report for the disallowance of the previous corresponding Acts, the undersigned recommends that the three Acts above mentioned be disallowed.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Chapter 14 was accordingly disallowed 23rd March, 1904, and Chapters 12 and 17 were disallowed 26th March, 1904.

EXTRACT from a Report approved 23rd March 1904.

DEPARTMENT OF JUSTICE, January 8th, 1904.

3 Edward VII.—Received by the Secretary of State on 25th June, 1903.

Chapter 8, intituled: "An Act to ratify an Order in Council approved on the eighteenth day of March, 1902, rescinding certain provisions of an Order in Council approved on the fourth day of September, 1901, respecting the land grant of the Columbia and Western Railway Company."

The undersigned reserves this Act for further consideration, inasmuch as he understands that objections are urged against it on behalf of the railway company whose title is thereby affected.

Chapter 12, intituled: "An Act to regulate immigration into British Columbia."

Chapter 14, intituled: "An Act relating to the employment on works carried on under franchises granted by private Acts."

Chapter 17, intituled: "An Act to further amend the 'Coal Mines Regulation Act.'"

The undersigned has already reported recommending the disallowance of these three Acts for the reasons upon which similar Acts have heretofore been disallowed.

Chapter 30, "An Act to incorporate the 'Adams River Railway Company.'"

Chapter 32, "An Act to incorporate the British Columbia Northern and MacKenzie Valley Railway Company."

Chapter 33, "An Act to incorporate the 'Flathead Valley Railroad Company.'"

Chapter 34, "An Act to incorporate the Kootenay, Cariboo and Pacific Railway Company."

Chapter 35, "An Act to incorporate the Kootenay Central Railway Company."

Chapter 36, "An Act to incorporate the Kootenay Development and Tramways Company."

Chapter 37, "An Act to incorporate the Morrissey, Fernie and Michel Railway Company."

Chapter 38, "An Act to amend the 'Nicola, Kamloops and Similkameen Coal and Railway Company Act, 1891.'"

Chapter 39, "An Act to incorporate the Pacific Northern and Eastern Railway Company."

Chapter 42, "An Act to amend the 'Vernon and Nelson Telephone Company Act, 1891.'"

Each of these Acts contains a provision in effect that the Act shall not come into force until the company shall give security to the satisfaction of the Lieutenant Governor in Council, that in the event of Dominion legislation bringing the company under the exclusive jurisdiction of the parliament of Canada, the authority of the Lieutenant Governor in Council to fix maximum rates for freight and passenger traffic shall be secured, as matter of contract and obligation of the company. This provision corresponds with that contained in previous Acts of British Columbia, the objections to which were stated by the Minister of Justice at the time. These chapters are subject to the same comment, but may for the same reasons be left to their operation.

C. FITZPATRICK,

Minister of Justice.

Report of the Honourable the Minister of Justice on Chapters 12, 14 and 17 of British Columbia Statutes, 1903 (no Order in Council was passed upon this report).

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1904.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a communication addressed to Your Excellency by the Consul General for Japan, dated 26th ultimo, urging upon

Your Excellency's government the disallowance of certain statutes of the legislature of British Columbia, passed during the year 1903, affecting Japanese.

The undersigned has already reported to Your Excellency recommending the disallowance of these statutes, and he has, therefore, no further recommendation to make upon the communication now referred.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

The Japanese Consul General to the Governor General of Canada.

IMPERIAL CONSULATE GENERAL OF JAPAN, FOR THE DOMINION OF CANADA,

26th February, 1904.

Right Honourable the Earl of Minto, Governor General of Canada:

SIR, YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to my previous despatch under date of the 20th May, 1903, in which I presented my protest under the instruction of His Imperial Japanese Majesty's Minister of State for Foreign Affairs, against the following Acts, enacted by the British Columbia legislature during their session of 1903, namely:—(1) An Act to regulate immigration into British Columbia, (2) An Act relating to the employment on works carried on under franchises granted by Private Acts, (3) An Act relating to the Coal Mine Regulations.

In my former despatch I had the honour of asking Your Excellency's government that they would take the earliest measures to have these Acts disallowed, as their existence would lead to the constant irritation and annoyance to our most friendly relations now existing between Japan and Canada. It is almost a year since these Acts had been enacted and had fully come into force in British Columbia, but I greatly regret to note that they have not yet been disallowed, although the time limit for such disallowance may very soon expire.

I have further honour of drawing Your Excellency's attention to the fact that while the said Acts of 1903 still remain in force, the British Columbia legislature on the 9th instant enacted another Act, entitled: "An Act to Regulate Immigration into British Columbia." This Act is quite identical with that of 1903 in every way, only difference in the new Act being much more rigid and severe in the execution and enforcement of the law.

The fact that this new Act being enacted solely against the Japanese people, as it has always been so is indisputable, and can be proven by several speeches made during the debate by the members of the British Columbia legislatures during last session, as shown in the copy of a "Hansard," which is herewith annexed as number one.

I see no reason why the British Columbia Legislature is so very persistent in taking such high-handed and unfriendly measures against the Japanese people, and why this Act should be tolerated to any length of time, without being disallowed. Your Excellency's government, doubtless, should be aware of the Japanese government enforcing her voluntary restrictions on her people emigrating to British Columbia, as your Prime Minister has been supplied from time to time with the list of Japanese arrivals in that province. The copies of these tables are herewith annexed as numbers two and three. According to these tables, Your Excellency will note that the passports issued by the Japanese government were in 1901, 165; 1902, 165; 1903 (four months), 97; and the total numbers of Japanese people landed during last seven months, ending in December, 1903, in British Columbia, were 1,425, but those who remained in that province were only 217, including old residents and their wives and children, a great majority being on their way to the United States. The numbers shown on the tables can further be proven by the statements made by the British

Columbia provincial immigration officers before the special committee appointed to investigate the violation of the Immigration Act, held last month at Victoria. The officer stated that "during 1903 about 95 per cent of the Japanese having passports had them for the United States." Another officer made a statement that two-thirds or 90 per cent of the Japanese who entered, left the province." These self-evidences on the part of the British Columbia government will show that only five to ten per cent of whole number of the Japanese people landed there, remained in the province, which can neither be said to be a large influx, nor to be a large addition to already fast decreasing Japanese population in British Columbia.

I do not doubt for a moment that Your Excellency's government will take the earliest measures to have both Acts of 1903 and 1904 disallowed at the same time, as you are well aware that these Acts are solely aimed at a discrimination against the Japanese people, and the enforcement, therefore, of these laws, specially that of 1904, will seriously affect the interest and dignity of our people.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

I have, &c.,

TATSZGORO NOSSE,

Consul General for Japan.

No. 1.

On the second reading of the Act to regulate immigration into British Columbia, the Attorney General said that this Act was intended to prevent the introduction of almost a direct copy of the Natal Act. By means of it he behind the province would have in its hands the power to exclude all classes of undesirable immigration.

Mr. J. A. Macdonald asked with respect to the constitutionality of the Act. He believed that similar Acts had been held to be unconstitutional.

The Attorney General said that the Dominion authorities had no power to disallow because a Bill was unconstitutional. It might be disallowed if contrary to the policy of the Dominion authorities.

Mr. Macdonald asked the Attorney General if he had considered whether the Act was constitutional or not.

The Attorney General said he had not the least doubt about it.

The Bill was then committed with J. R. Brown in the chair.

Mr. Paterson pointed out that this Act would debar persons from Eastern Canada from coming into this province if he could not read. He considered it was a disgrace that a native born Canadian, who, through misfortune, was unable to read and write, should be debarred from entering.

The Attorney General held that it was impossible to find 500 men in Canada who could not read or write.

An amendment introduced by Mr. Evans, excluding residents of the Dominion of Canada from the operation of the Act, was carried.

On the sections making it a penalty for the master of a vessel bringing in prohibited immigrants, Mr. McInnes pointed out that the government was but paving the way for disallowance. It should be made broad so as to apply to persons coming in from every direction, and then it could not be said to be pointed directly at Japanese. The Japanese were the only objectionable class coming in by steamer to whom this would apply. Advantage might be taken for this to disallow the Act.

The Attorney General said that the government would put it through in this form and this alone.

Mr. McInnes said upon the heads of the government would fall the responsibility. He wanted to go on record on this matter.

Mr. J. Oliver, before the Act was passed, proposed that provision be made to allow of particular friends of the government making arrangements for their friends collecting a fee of \$2 for immigrants entering.

The Bill was reported.

No. 2.

Actual number of passports issued by the Japanese government to their people, who left for Canada in the years 1901, 1902 and 1903:—

	1901		1902.		1903, 4 MONTHS.	
	Male.	Female.	Male.	Female.	Male.	Female.
Students.....	15	0	16	0	5	0
Merchants.....	39	1	55	6	27	1
Families.....	46	21	47	24	26	10
Professionals.....	25	4	29	3	17	13
Officers.....	3	1	4	1	0	0
	138	27	141	34	73	24
Totals.....	165		185		97	

The families include wives and children of the old resident in British Columbia.

The professionals include all kinds of men of professions, such as physicians, teachers, clergymen, agriculturists, chemists, &c., and their assistants and those who make studies of the same.

No. 3.

Numbers of arrivals of Japanese passengers in British Columbia during the seven months from June to December, 1903; Merchants, 7; travellers, 1,208; students, 12; old residents and families, 188; passed test, 10; total, 1,425.

The Japanese Consul General to the Governor General of Canada.

IMPERIAL CONSULATE GENERAL, MONTREAL, May 20th, 1903.

His Excellency Honourable Earl of Minto, Governor General of Canada, &c.

SIR, YOUR EXCELLENCY,—Under instruction of His Imperial Japanese Majesty's government, I have the honour of calling Your Excellency's attention to the following Bills, that were passed by the British Columbia Legislative Assembly at present in session, and that have become the law, being assented by the Lieutenant Governor of the province, namely:—

1. The Act intituled: "An Act to regulate Immigration into British Columbia."
2. The Act intituled: "An Act relating to the employment on works carried on under franchises granted by private Acts."

The two Acts are practically the re-enactment of that which were disallowed by Your Excellency's Order in Council twice in succession in 1901 and 1902.

Holding the same view as argued in my despatches of last year under similar circumstances, I have again the honour of drawing your attention to the fact that the Acts referred to are utterly unconstitutional, and are unquestionably meant to prohibit the Japanese subjects from residing in and entering British Columbia.

Your Excellency is doubtless aware that such legislation as these, with respect to the aliens, is incompetent to a provincial legislature, as only the Dominion Parliament of Canada is empowered to treat upon the subject, and that the object of enactment of these Acts is aimed obviously and solely at the exclusion of the Japanese people from the province in question, since the case of "Immigration Law" the Chinese are exempt by the payment of \$800, as provided in section 3, subsection F; and again in

the case of "The Employment on Works carried on under Franchises," there is another example of strong and deliberate manifestation of discrimination against the Japanese residents, as the so-called language test does not include the language of Japan, but only those of the European countries, while none of these languages except the English, being spoken in the province in general.

Knowing your government are fully posted on the question and trusting that they will take measures nothing but fair and just, I need hardly any further argument, but to request that Your Excellency's government will have these obnoxious Acts disallowed at an early date, as the enforcement even for a short period would seriously affect the interest and welfare of the Japanese subjects and the full enjoyment of their rights and privileges entitled by the treaty stipulations would be wrongfully denied by the local authorities.

I have, &c.,

(T. NOSSE,

His Imperial Majesty's Consul General for the Dominion of Canada.

(Approved 19 April, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, 26th March, 1904.

To His Excellency the Governor General in Council:

The undersigned, with further reference to the Act passed by the legislature of the province of British Columbia, in the year 1903, chapter 8, intituled: "An Act to ratify an Order in Council, approved on the 18th day of March, 1902, rescinding certain provisions of an Order in Council approved on the 4th day of September, 1901, respecting the land grant of the Columbia and Western Railway Company," which was by his previous report reserved for further consideration, has the honour to recommend that the said Act be left to its operation.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

4 EDWARD VII, 1903-4.

To His Excellency the Governor General in Council, Ottawa:

The humble petition of the Esquimalt and Nanaimo Railway Company sheweth unto Your Excellency as follows:—

1. On the 19th day of December, 1883, the Legislative Assembly of British Columbia passed a statute, No. 14 of Provincial Statutes of 1884, intituled "An Act relating to the Island railway, graving dock and railway lands of the province."

2. By section 3 of the said Act, there was granted to the Dominion Government certain lands for the purpose of constructing and to aid in the construction of a railway between Esquimalt and Nanaimo.

3. By section 8 it was enacted that such persons hereinafter called the "company" as may be named by the Governor General in Council, &c., shall be and are hereby constituted a body corporate and politic by the name of "The Esquimalt and Nanaimo Railway Company."

4. By order in Council, dated the 12th April, 1884 His Excellency the Governor was pleased to name Robert Dunsmuir, John Bryden, James Dunsmuir, Charles Crocker, Charles E. Crocker, Leland Stanford and Collis P. Huntington, &c., as a body corporate and politic by the name of "The Esquimalt and Nanaimo Railway Com-

pany," for the purposes of the construction of the railway between Esquimalt and Nanaimo in accordance with the provisions of aforesaid section 8. (See *Canada Gazette*, 19th April, 1884.)

5. On the 20th day of April, 1883, an agreement was entered into between Robert Dunsmuir, James Dunsmuir, John Bryden, Charles Crocker, Charles F. Crocker, Leland Stanford and Collis P. Huntington of the first part, and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, of the second part (section 4), for the purpose of building a line of railway between Esquimalt and Nanaimo, and (16) the land grant to be made, and the land in so far as the same shall be vested in Her Majesty and held by Her Majesty for the purposes of the said railway, or for the purposes of constructing or to aid in the construction of the same, shall be conveyed to the contractors upon the completion of the whole work to the entire satisfaction of the Governor in Council, &c., as set forth in said section, and sections 23, 24, 25 and 26 of the Act of 19th December, 1883, are particularly referred to.

6. The said agreement was approved and ratified by Act of Parliament of the Dominion of Canada, chapter 6, of 1884.

7. And by section 7 of the said Act the land was to be granted to the said company subject to the exception therein set forth *inter alia* subsection 2 every *bona fide* squatter who has continuously occupied and improved any of the lands within the tract of land to be acquired by the company from the Dominion Government for a period of one year prior to the first day of January, 1883, shall be entitled to a grant of the freehold of the surface rights of the said squatted land to the extent of 160 acres at the rate of one dollar per acre.

8. The Esquimalt and Nanaimo Railway Company completed the whole work to the entire satisfaction of the Governor in Council as is witnessed by the deed under the Great Seal of Canada dated the 21st day of April, 1887, which granted, assigned and conveyed unto the Esquimalt and Nanaimo Railway Company the lands mentioned in the said Act of the Provincial Legislature, chapter 14, 1884, and of the Dominion Parliament, chapter 6, 1884, subject to the terms and provisions affecting the same set forth in the said Acts.

9. Since the conveyance of the lands aforesaid to the said company, the said company have administered the said lands according to the terms and conditions set forth in the said Act, cap. 14, 1884.

10. The squatters mentioned in section 23 of the Act of 1884, c. 14, and Dominion Statutes, subsection 2, of section 7 of c. 6 of 1884, became dissatisfied and claimed more extensive rights than those accorded to them by the statutes aforesaid, and the Dominion Government on the 10th August, 1897, issued a commission to Mr. T. G. Rothwell to investigate the claims set up by the settlers upon the tract of land which was conveyed to the Government of the Dominion of Canada by the Province of British Columbia, and by the Dominion of Canada to Esquimalt and Nanaimo Railway as hereinbefore set out.

Mr. Rothwell in his report (which is published in the Annual Report of the Department of the Interior, 1898) at folio 459, states, "The settlers mentioned are those who are referred to as *bona fide* squatters in section 23, of the Provincial Act, c. 14, 1884, and in subsection 2, of section 7, of the Dominion Act, c. 6 of 1884," and states at folio 460, "When I have completed this task I feel satisfied that I will have established the conclusion I have arrived at, that although these settlers, speaking generally, have now no legal right to the coal, and other minerals under their lands, they or those claiming from them have a just claim for redress at the hands of the province in which they live, and a claim which that province cannot honourably refuse to recognize and settle," and at folio 469, "I repeat, therefore, that I consider it the duty of the Government of British Columbia to take such action as will promptly and satisfactorily remove the injustice."

11. On the 12th day of October, 1900, the Provincial Government issued a commission to Mr. Eli Harrison, a judge of the county court of British Columbia, who,

after a very exhaustive inquiry, reported to the Provincial Government that the "squatters" could not now acquire the coal or minerals, if any, under the lands squatted on, as such coal and minerals had been conveyed to others. Mr. Harrison's report is published at folio 337 of the Sessional Papers, B.C. 1903.

12. In the year 1903, the Local Legislature passed an Act, No. 26, intituled "Vancouver Island Settlers' Rights Act, 1903."

13. In the year 1904, the Local Legislature passed an Act, chapter 54, intituled "Vancouver Island Settlers Rights' Act, 1904." This Act by section 5, repeals cap. 26 aforesaid.

14. By subsection A, of section 2, "Railway Land Belt," shall mean the lands described by section 3, of chapter 14, of 47 Victoria, being "An Act relating to the Island Railway, the Graving Dock and Railway Lands of the Province."

15. By subsection B, of section 2, a "settler" is described as a person who, prior to the passing of the said Act, occupied or improved lands situate within the said railway land belt with the bona fide intention of living thereon.

16. Section 3, of the said Act is as follows:—

"Upon application being made to the Lieutenant Governor in Council, within twelve months from the coming into force of this Act, showing that any settler occupied or improved land within said railway land belt prior to the enactment of chapter 14, of 47 Victoria, with the bona fide intention of living on the said land, accompanied by reasonable proof of such occupation or improvement and intention, a Crown grant of the fee simple in such land shall be issued to him or his legal representative free of charge and in accordance with the provisions of the Land Act in force at the time when said land was first so occupied or improved by said settler."

17. Section 4 provides that "The rights granted to the settler under this Act shall be asserted by and be defended at the Crown expense."

18. The definition of "settler" as set forth in chapter 54 of 1904, does away with the definition of the term "squatter" as set out in chapter 14 of 1884, aforesaid, though he is one and the same person.

19. Section 3 of the said Act gives to the squatter of section 23, of chapter 14, under the title of settler, all the coal and mineral under the lands squatted on.

20. The Esquimalt and Nanaimo Railway Company made their contract as aforesaid with the Dominion Government, and upon the due completion thereof received a grant of the said lands from the Dominion Government upon the same terms and conditions they were granted to the Dominion Government by the Provincial Government of British Columbia by chapter 14 of 1884.

21. The Esquimalt and Nanaimo Railway Company do not recognize the right of the Provincial Legislature to interfere with the land grant, as the company did not receive the land from the Provincial Government, nor did they enter into any contract with the Provincial Government.

22. The granting of the minerals under the lands of the squatters as mentioned in section 23, of c. 14, of 1884, will be a great injury to the property of the Esquimalt and Nanaimo Railway Company, and an interference with the contract made between the Esquimalt and Nanaimo Railway Company and Dominion Government.

Dated the day of March, A.D. 1904.

The Esquimalt and Nanaimo Railway Company therefore humbly pray Your Excellency in Council to disallow the said Act, No. 54 of 1904, known as the "Vancouver Island Settlers' Rights Act, 1904," passed by the Provincial Legislature of the Province of British Columbia.

JAMES DUNISMUIR,

President of the Esquimalt & Nanaimo Railway Company.

(Seal.)

Monday, 21st March, 1904.

CHAS. E. POOLEY,

Secretary Esquimalt & Nanaimo Railway Company.

(Approved, 19 February, 1904.)

DEPARTMENT OF JUSTICE, CANADA,

OTTAWA, April 5, 1904.

To His Excellency the Governor General in Council:

On reference to the undersigned of a copy of a petition of the Esquimalt and Nanaimo Railway Company praying Your Excellency in Council to disallow Act No. 54 of the British Columbia Legislature, 1904, known as the Vancouver Island Settlers' Rights Act, 1904, the undersigned has the honour to recommend that a copy of the petition be transmitted to the Lieutenant Governor of British Columbia, with a request that he submit for the consideration of Your Excellency's Government the observations of his ministers thereon.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Transmitted by the Lieut. Governor to the Secretary of State, 27 May, 1904.

THE GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA.

Copy of a report of a Committee of the Honourable the Executive Council, approved by His Honour the Lieutenant-Governor on the 26th day of May, 1904

To His Honour the Lieutenant-Governor in Council:

The Committee of the Executive Council have had under consideration the petition of the Esquimalt and Nanaimo Railway Company, and beg respectfully to report as follows:—

The whole of the land claimed by the settlers as against the Esquimalt and Nanaimo Railway Company was acquired before December 19, 1883, being the date of the passage of what is commonly called the Settlement Act. By the Land Act of 1875, 38 Victoria, chapter 5, section 3, "any person being the head of a family . . . and a British subject," after complying with the provisions of the section, might "record any tract of unoccupied, unsurveyed and unreserved lands of the Crown, not being an Indian settlement." The section then prescribes the acreage and other matters. By section 9 of that Act, it is provided that upon compliance by the applicant of the provisions hereinbefore contained, the Commissioner "shall record the land so sought to be recorded," &c.

It would appear then, that the settler, upon complying with the provisions of sections 3 to 9, obtained an absolute right to have the land recorded in his favour. It was not an act of grace on the part of the Crown, but was put even more forcibly than the right of the miner to record his claim without inquiry into the conditions precedent to his making his record, which right has never been questioned in the history of the province.

This was the condition of affairs at the date of the Settlement Act. The Settlement Act did not interfere with the rights of the settler in any way, but on the contrary, carefully preserved them, and all other rights however acquired. The legislature went even further than the preservation of the rights actually acquired, because it preserved so far as the surface rights were concerned, the rights of any one who had "squatted," that is, located without any colour of right, upon the land, the right to obtain a grant of the surface.

A number of persons, antecedent to December 19, 1883, did all those things necessary to entitle them to a record of the land under the "Land Act, 1875," but were refused the right to perfect their title by the officer declining to make the record in

favour of the applicant, and declining also to give him the certificate required by section 9 of the said Act. Three of those persons have attempted unsuccessfully to assert their rights as against the railway company.

The legislature by the Settlement Act did not convey to the Dominion, under which government the Esquimalt and Nanaimo Railway Company claim, any lands in the railway belt as to which any other person had a lawful claim, and perhaps the only way in which the rights of the settlers could be asserted is not by an action brought by themselves against the Esquimalt and Nanaimo Railway Company, but by an action brought either by the Attorney General on behalf of the province, or by giving the settlers a provincial title and allowing them to contest the matter themselves. This latter course was the one which commended itself to Your Honour's advisers, hence the passage of the Vancouver Island Settlers' Rights Act, 1904, chapter 64.

In making this report, the committee do not overlook one of the difficulties which may arise in the course of the litigation, viz.: that the settler was bound to make his record upon "unoccupied, unsurveyed and unreserved land of the Crown"; and in the *British Columbia Gazette* of July 5, 1873, a reserve was placed upon a strip of land 20 miles in width along the east coast of Vancouver Island between Seymour Narrows and Harbour of Esquimalt. That reserve, by its recitals, is apparently founded upon incorrect premises. It is founded upon the suggestion that Esquimalt in Vancouver Island was, by an Order of the Privy Council of Canada, fixed as the terminus of the Canadian Pacific Railway, and that a line of railway was to be located between the Harbour of Esquimalt and Seymour Narrows. It was founded, further upon the 11th paragraph of the Terms of Union, and the Terms of Union distinctly preserved to settlers the right of pre-emption, and provided, as did the Settlement Act, that lands be given in lieu of those which might have been pre-empted before the transfer took place.

The committee is, therefore, of opinion that those persons who had made application to pre-empt lands antecedent to December 19, 1883, and who in good faith had occupied and improved lands with a *bona fide* intention of living thereon, were entitled to receive grants from the Crown, and for that reason recommended the Bill to the legislature.

Mr. Rothwell, in his report, cited in the petition of the Esquimalt and Nanaimo Railway Company to His Excellency, arrived at the conclusion that these settlers had not been fairly treated, the same conclusion having been arrived at by Your Honour's advisers, the only difference between Your Honour's ministers and Mr. Rothwell being the mode of redress.

In conclusion, the committee submit that the Act in question is fairly within the powers of legislature, as dealing with property and civil rights, and in this connection they refer with some degree of confidence to the opinion of Sir Oliver Mowat, stated in Lefroy's *Legislative Power in Canada*, at page 201, where he says:—

"I repudiate the notion of the petitioners that it is the office of the Dominion government to sit in judgment on the right and justice of an Act of the Ontario legislature relating to property and civil rights. That is a question for the exclusive judgment of the provincial legislature."

The committee further beg to refer to the report of the Honourable David Mills, then Minister of Justice, and afterwards a judge of the Supreme Court of Canada, having reference to British Columbia legislation of the year 1901 (chapter 45), "An Act respecting certain Land Grants," wherein after reciting that the gravamen of the objection was that royalties were imposed upon the timber standing upon the lands granted to the Kaslo and Slocan Railway Company and the Nelson and Fort Sheppard Railway Company by way of subsidy in aid of the railway, and that whereby the value of the timber of the railway companies was impaired, namely that there was an interference with vested rights. The minister remarks as follows:—

"The undersigned does not deem it necessary to consider in detail the remarks of the Attorney General. He does not acquiesce in all of them, but the undersigned bases

his refusal to recommend disallowance upon the fact that the application proceeds upon grounds affecting the substance of the Act with regard to matters undoubtedly within the legislative authority of the province and not affecting any matter of Dominion policy. It is alleged that the statute affects pending litigation and rights existing under previous legislation and grants from the province. The undersigned considers that such legislation is objectionable in principle and not justified unless in very exceptional circumstances, but Your Excellency's Government is not in anywise responsible for the principle of the legislation, and as has already been stated in this report with regard to the Ontario statute, the proper remedy in such cases lies with the legislature or its constitutional judges."

It may be said after all this Act is only an Act to provide a means for conferring a title in certain proper cases where justice requires title to be conferred, and not from or out of any property of the railway company, but out of lands reserved out of the grant made by the Settlement Act, and in any event lands still vested in the Crown in right of the province.

The committee, therefore, respectfully submit that no good ground exists for the exercise of His Excellency of the power of disallowance in respect of the Act in question.

The committee advise that a copy of this report, if approved, be forwarded to the Honourable the Secretary of State for Canada.

Dated this 21st day of May, A.D. 1904.

A. CAMPBELL REDDIE,

Deputy Clerk, Executive Council.

(Approved 21 June, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, June 14, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit herewith his report upon chapter 54 of the statutes of the province of British Columbia or 3 and 4 Edward VII, entitled "An Act to secure to certain pioneer settlers within the Esquimalt and Nanaimo Railway land belt their surface and under-surface rights."

A petition has been presented to Your Excellency in Council by the Esquimalt and Nanaimo Railway Company praying for the disallowance of this Act on the ground that it is an interference with the company's rights in the lands contained in the railway belt as assignee of the Dominion government. A copy of the petition is annexed to this report. This petition was communicated to the Lieutenant Governor of British Columbia with a request that His Honour would furnish Your Excellency's government with the observations of his ministers thereon, and there also is annexed to this report a copy of a letter from the Lieutenant-Governor to the Secretary of State, dated May 27th, 1904, and of the approved report therein referred to embodying the views of the British Columbia government with regard to the petition.

It is unnecessary that the undersigned should enter minutely into the history of the railway belt in question. It will be sufficient for present purposes to state that it was set apart in pursuance of the Terms of Union with British Columbia to be appropriated in furtherance of the construction of the proposed railway to connect British Columbia with the eastern provinces; that by the provincial Act 47 Victoria, chapter 14, known as the Settlement Act, it was granted to the Dominion Government for the purpose of construction and to aid in the construction of a railway between Esquimalt and Nanaimo, subject to certain exceptions, and that the Esquimalt and Nanaimo Railway Company, the petitioners, are the assignees and successors in title of the Dominion Government, as set forth in the petition.

Under these circumstances if the British Columbia Act would have the effect, as the railway company apparently fears, of divesting the company of its title under the grant from the Government of Canada in respect of any of the lands in the belt, the undersigned would feel it to be his duty to recommend that Your Excellency should exercise his power of disallowance in order to prevent the consummation of such an injustice. The undersigned, however, is satisfied that the Act can have no such effect. Although it recites that under the circumstances set forth in the preamble, the settlers referred to therein are entitled to peaceable and absolute possession of the lands occupied by them and to a title thereto in fee simple in accordance with the statutes of British Columbia existing at the time of their settlement; it does not proceed to meet or to declare by way of enactment that the lands are or shall be vested in them as of that estate, but enacts only that upon the application of the settlers and upon their establishing certain facts Crown grants of the fee simple shall be issued to them free of charge in accordance with the provisions of the Land Act in force at the time when the land was first occupied or improved, and that the rights granted to the settler under the Act shall be asserted by and be defended at the expense of the Crown. Now a Crown grant issued pursuant to such an Act can, in the opinion of the undersigned, convey to the grantee, such title only as the province has in the lands which it purports to grant. In so far as it purports to grant lands or coal or other minerals which under the Settlement Act were granted to Canada, and under grant from Canada have passed to the company, it will be inoperative, but it is impossible that some of the land occupied as set forth in the recitals to the Act is covered by exceptions from the grant to Canada, or remains the property of the province, and so far as that is the case the Act may have effective operation.

Taking the view thus explained as to the effect of the Act, and being of opinion that such legislation is not *ultra vires* of the legislature, the undersigned does not think that Your Excellency would be warranted in disallowing the Act merely because the railway company may be put to some trouble and expense in the assertion and defence of its title.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

NOTE.—*With respect to this Act and to Chap. 71 of 1907, B.C., the Privy Council (61 D.L.R.I.) held that the language of S. 56 of the B.N.A. Act "itself discloses with sufficient clearness an intention that at all events as to private rights completely constituted and founded upon transactions entirely past and closed the disallowance of a provincial statute shall be inoperative."*

Petition praying for the disallowance of Chap. 62 of the Statutes of 1904.

The petition of the undersigned humbly sheweth:—

(a) The city of Vancouver, in the province of British Columbia, is incorporated under a special Act of the Legislative Assembly of the said province.

(b) It has been customary from time to time for the corporation to apply to the legislature for amendments to the said Act whenever the members of the city council thought amendments necessary, the corporation paying all the printing and other expenses connected with the passage of such amendment through the legislature.

(c) Towards the end of last year, the city council discussed the advisability of again approaching the legislature at the then ensuing session with a request for some further amendments—and being desirous first of obtaining the views of the government thereon, the city council caused inquiry to be made through one of the aldermen, Alderman Bethune, of the Attorney General, the Hon. Charles Wilson, who assured the aldermen that if the corporation did not get what it wanted, it would at least get nothing that it did not want.

(d) In view of this assurance, the city council immediately made the necessary preparations for presenting a private Bill for amending the city's Act of Incorporation, the Private Bill being entrusted to the care of Mr. James F. Garden, one of the city's representatives, during its passage through the House.

(e) About the same time a certain Vancouver newspaper began to circulate a petition addressed to the legislature asking that on the score of mismanagement and annually recurring change, the police force, which, patterned after the best models of the old country municipalities, has been managed heretofore by a committee of the council and is paid solely by the city, and which, it may be stated, does not form one-fourth of the total number of the city's employees, so that if there are mismanagement and change in one, there is precisely the same reason for mismanagement and change in the other—should be taken from the control of the city council and placed under a board of commissioners to be appointed by the Provincial Government.

(f) Out of a total of about 9,500 electors, this petition was signed by 600 persons, only about 550 of whom are voters, and amongst those signing the petition, the liquor interest, for some reason, is well to the front.

(g) This petition was presented to the House on December 11, last, but was not printed, and the House adjourned for the holidays the day after, and did not meet again till January 11.

(h) On February 4, Mr. Garden, who had been entrusted as above stated, with the care of the city's bill, without notifying the city council, or as far as the council knows, any one representing the corporation, gave notice of an amendment to place the city police force in the hands of a board of commissioners, as asked for by the petition.

(i) This notice appeared in the Orders of the Day on Saturday, February 6, and the earliest time at which a copy of the said Orders of the Day could arrive from Victoria and be distributed by mail in Vancouver, was Monday, February 8.

(j) On the evening of that same day, February 8, the city council met and resolved to send, and did send, urgent telegrams to all five of the city's representatives strongly protesting against the insertion of the proposed amendment.

(k) In spite of such protest, and before the city council had time to make its feelings or the feelings of the citizens known either to the opposition or to the other members of the House, the Bill containing the objectionable amendment was rushed through its various stages, read a third time, passed and assented to, all by Wednesday, February 10.

(l) In view of all the circumstances, your petitioners humbly pray that the aforesaid Bill, passed at the session of the Legislature just closed, being Bill known as No. 54, and called "An Act to amend the Vancouver Incorporation Act, 1900," be disallowed; and they do so for the following reasons, viz.:

1. Acting on the authority conferred on them by the said Bill, the Provincial Government has just appointed a Board of Police Commissioners for Vancouver, all of whom are more or less prominent members of the Conservative party.

2. A partisan Police Board of this nature always failed and became a fruitful source of corruption wherever it has been tried.

3. The people of Vancouver think as long as they pay for their police force, they have a right to control it—in proof of which it may be stated that at a largely attended public meeting of the citizens held on Tuesday, February 23, a resolution strongly condemnatory of the course of the government in the matter was passed, with only one dissenting voice.

4. Many petitions on many subjects have been presented in times past to the British Columbia Legislature, but it is safe to say that never before was there a petition the prayer of which had such a flimsy basis, or was acted upon with such undue, not to say such suspicious haste, as the one referred to above.

5. The statements made on the petition, and on which the legislature presumably acted, are either false or mean nothing—false as far as mismanagement is concerned, because during all the years in which the police have been under the control of the city council, their management will compare favourably with that of any other city of similar size in the Dominion, and can mean nothing so far as annually recurring change is concerned, because one of the amendments for which the city council itself asked was that one-half only of the aldermen should be allowed to retire annually, and the proposal was voted down.

6. Prejudiced accounts of the city council's deliberations given in the newspaper referred to above, exercised an influence, no doubt, on the minds of some of the 600 signers of the petition, a city council unlike private corporations owning public franchises, having nothing to offer newspapers to induce them to give fair accounts of the council's proceedings, unless the newspapers themselves chose to do so.

7. The Act, in view of the promise of the Attorney General, is a direct breach of faith with the city council.

And your petitioners, as in duty bound, will ever pray, &c.

[SEAL]

Signed on behalf and at the request of the }
Corporation of the City of Vancouver }
this 1st day of March, A.D. 1904.

THOS. F. McGUIGAN,
City Clerk.

(Approved, 16 November, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, October 29, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last sessions of the legislatures thereof (1904), as follows:—

* * * * *

British Columbia; 3 and 4 Edward VII; received by the Secretary of State on January 4, 1904.

These Acts may be left to such operation as they may have, except chapter 15, intituled "An Act respecting the constitution, practice and procedure of the Supreme Court of British Columbia and for other purposes relating to the administration of justice."

Section 5 contains a provision that the persons to be appointed judges of the Supreme Court of British Columbia shall be barristers-at-law of not less than ten years standing, of which ten years they shall have been for five years actively engaged in practice at the Bar of British Columbia.

This provision is, in the opinion of the undersigned, *ultra vires*, and ought not to be allowed to stand. A similar enactment by the Province of Nova Scotia was considered some years ago by the Department of Justice, and the Minister recommended that it be disallowed unless repealed by the legislature. See the order in council setting forth the reasons of the Minister, approved by His Excellency the Governor General on November 19, 1896 (Provincial Legislation, 1896-8, pages 12 to 14.)

For the same reason the undersigned recommends that inquiry be made immediately of the Lieutenant Governor of British Columbia as to whether the clause in question will be repealed within the time limited for disallowance. The Lieutenant Governor's reply when received should be referred to the undersigned for further consideration.

Chapter 17, intituled "An Act to consolidate and amend the law respecting the qualification and registration of electors, the regulation of elections of members of the Provincial Legislative Assembly, and the trial of Controverted Elections."

Chapter 26, intituled "An Act to regulate Immigration into British Columbia," and

Chapter 39, intituled "An Act to amend the 'Coal Mines Regulation Act'" are reserved for further report.

Chapter 54, intituled "An Act to secure to certain Pioneer Settlers within the Esquimalt and Nanaimo Railway Land Belt their surface and under-surface rights," has been already considered and left to its operation by Order in Council of June 21 last.

Chapter 62, intituled "An Act to amend 'The Vancouver Incorporation Act, 1900,'"

There has been referred to the undersigned copy of the petition of the city of Vancouver praying that this Act be disallowed on the grounds therein stated.

The petitioners are opposed to having a board of police commissioners for the city, and they allege that the Bill was unduly hastened through the legislature; also that the facts of the case were misrepresented and that there was breach of faith.

These reasons, however, do not affect the validity or character of the legislation so far as the capacity of the legislature goes, and the undersigned considers that the grievance of the city, if any exists, should be adjudged by the legislature, which has authority to remedy it, and that it would not be within the province of Your Excellency's government to take any action based upon any view which it may hold as to the facts and reasons urged for disallowance.

The undersigned does not, therefore, recommend any interference with this Act, but he recommends that the city of Vancouver be informed of the grounds of this report and the conclusion of Your Excellency's Government upon the petition.

* * * * *

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province, shall be communicated to the Lieutenant Governor of the province.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved, 29 December, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, November 16, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that chapter 17 of the Acts of British Columbia passed at the last session of the legislature (1904) intituled

"An Act to consolidate and amend the law respecting the qualification and registration of electors, the regulation of the election of members of the Provincial Legislative Assembly, and the trial of Controverted Elections" provide among other things that every male of the full age of twenty-one, not being disqualified by this Act, or by any other law in force in the province, being entitled within the province to the privileges of a natural-born British subject, and being able to read the Act or any portion thereof to the satisfaction of the registrar if required so to do, having resided in the province for six months, and in the electoral district in which he claims to vote for one month, and being duly registered, shall be entitled to vote.

The general intention is apparently to extend the right to vote to male British subjects of the age of twenty-one years resident in the province. It is provided, however, that no Chinaman, Japanese or Indian shall have his name placed on the register

of voters for any electoral district, or be entitled to vote at any election; and by the interpretation clause the words "Chinaman" and "Japanese" are defined to include any person of these races respectively whether naturalized or not.

The naturalization Act, R.S.C., chapter 113, section 15, provides that an alien to whom a certificate of naturalization is granted shall within Canada be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject within Canada.

The undersigned does not doubt that a legislature may define the local franchise, but he considers that Your Excellency's Government ought not to approve of the policy of a legislature withholding from naturalized British subjects merely because of their race or naturalization rights or privileges conferred generally upon natural-born British subjects of the same class. Parliament having exclusive authority with regard to naturalization and aliens has, the undersigned apprehends, the right to declare what the effect of naturalization shall be, and local legislation which is intended to interfere or has the effect of interfering with the apparent policy of parliament in the exercise of its powers with regard to any subject may, in the opinion of the undersigned, even if it can be held to be *intra vires* of the legislature, properly be disallowed by Your Excellency. It appears to the undersigned to be quite undesirable in the public interest that naturalized British subjects should be made subject to a disability or exceptional treatment having regard to the rights conferred upon British subjects generally, and he understands that that view is expressed or implied in the section of the Naturalization Act above referred to. The undersigned would for that reason recommend disallowance were it not for the fact that the provisions in question are merely re-enactments of similar provisions which have been standing in the British Columbia Election Acts for a number of years. The disallowance of the present statute would not, therefore, affect the law of British Columbia in this particular.

The undersigned hopes, however, that this matter will be further considered by the provincial legislature, and such amendments made as may be necessary to remove the objections herein stated.

Chapter 39, "An Act to amend the Coal Mines Regulation Act," contains only one provision. It is in amendment of section 2 of the Coal Mines Regulation Act, R.S. B.C. (1897), chapter 138, whereby it is enacted that "the words Chinamen and Chinese" shall include any person or persons of the Chinese blood or race whether born within the limits of the Chinese Empire or its dependencies or not, and shall not be affected by naturalization."

This is an interpretation clause and of course has no effect except as defining these terms mentioned therein where they appear elsewhere in the Act.

Referring to the amended Act it is provided by section 4 that "no boy under the age of twelve years, and no woman or girl of any age, and no Chinaman shall be employed in or allowed to be for the purpose of employment in any mine in which this Act applies below ground."

By section 12 it is provided that any person who contravenes or fails to comply with any provision of the Act with respect to the employment of Chinamen shall be guilty of an offence against the Act, and by section 82, rule 34, no Chinaman shall occupy any position of trust or responsibility in or about a mine whereby through his ignorance, carelessness or negligence he might endanger the life or limb of any person therein employed. These so far as the undersigned has discovered are the only provisions of the amended Act expressly relating to Chinamen. Section 4, above quoted, was held *ultra vires* by the Judicial Committee of the Privy Council in the case of the Union Colliery of British Columbia vs. Bryden, 1899, Appeal Cases, p. 580 as legislation affecting naturalization and aliens. Upon the same principle the undersigned assumes that the other provisions of the amended Act to which he has called attention are *ultra vires*, and the question arises as to what can be the intention of the legislature in extending the meaning of the word "Chinaman" in this Act where

it has been held by the highest judicial authority incompetent to the legislature to enact the provisions in which the word occurs.

The amending Act is also objectionable as apparently attempting to deprive naturalized Chinamen on account of their naturalization, of rights which they now have.

For these reasons it appears to the undersigned that this Act should be disallowed. Before recommending such action to be taken, however, he considers that a copy of this report, if approved, should be transmitted to the Lieutenant Governor of British Columbia for any explanation or remarks which he may desire to offer, and that he be particularly requested to inform Your Excellency's government as soon as possible as to what object within the legislative capacity of the assembly is intended to be accomplished by this Act. Upon receiving a reply from the Lieutenant Governor it should be referred to the undersigned for further consideration.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 20 January, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 16, 1904.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 26 of the Acts of British Columbia, passed at the last session of the legislature (1904) intituled "An Act to regulate immigration into British Columbia."

This Act bears the same title and is essentially of the same effect as other Acts of the province which have during recent years been disallowed by Your Excellency. It prohibits the immigration into British Columbia (subject to certain exceptions) of any person who when asked to do so by an officer fails to write out at dictation in the character of some language of Europe and sign in the presence of the officer a passage of fifty words in length in an European language directed by the officer. Among other immigrants excepted from this prohibition are those excepted by certificate in writing of the Minister charged with the administration of the Act or of any officer appointed to enforce its provisions. Power is conferred to prevent prohibited immigrants from entering the province and to deport those who have entered, and masters of vessels arriving at ports in the province with passengers are required to submit their passenger lists and answer questions and assist the provincial officers in the performance of their duties under the Act. Regulations may be made by the Lieutenant Governor in Council to empower officers to determine whether any person is a prohibited immigrant and to prescribe a tariff of fees to be paid by persons to cover any expenses which may be incurred in determining whether such persons are or were not prohibited immigrants.

This Act, therefore, contains all the provisions which have been condemned in the British Columbia Immigration Acts recently disallowed. The grounds of objection to these Acts have been stated and reiterated on behalf of Your Excellency's government. See particularly the reports of the Minister of Justice of 5th January and 4th September, 1901, upon which the Act to Regulate Immigration into British Columbia of 1900 was disallowed.

The undersigned does not consider, in view of the past correspondence and action of Your Excellency's government having regard to such legislation, that any object is to be attained by further communication with the local authorities, and he recommends following the decision which was previously reached, and the course adopted

on previous occasions, that this Act be disallowed. He recommends further that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Chapter 26 was accordingly disallowed 20 January, 1905.

Copy of a Report of a Committee of the Executive Council, approved by the Lieutenant Governor on the 26th day of January, 1905, transmitted to the Secretary of State by the Lieutenant Governor on 27 January, 1905.

The Committee of Council have had under consideration a report herewith, dated January 19, 1905, from the Attorney General, upon the report of the Minister of Justice of November 16, 1904, with respect to certain provisions of chapters 17 and 39 of the Acts of British Columbia, 1903-1904, intituled the "Provincial Elections Act," and the "Coal Mines Regulation Act Amendment Act, 1904."

The committee concur in the report of the Attorney General and submit the same for approval.

CHARLES WILSON,

Clerk, Executive Council.

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to refer to Your Honour's letter of the 17th January, 1905, to the Provincial Secretary, inclosing report of the Minister of Justice to His Excellency the Governor General upon chapters 17 and 39 of the Statutes of British Columbia for the years 1903-1904, being the "Provincial Elections Act" and the "Coal Mines Regulation Act Amendment Act, 1904."

With regard to chapter 17, the provisions objected to are those contained in section 6, which provides that no Chinaman, Japanese, or Indian shall have his name placed upon the register of voters. That section, interpreted, as the Minister points out, includes not only alien Chinese, but also persons of the Chinese race who, acting in conformity with the Dominion Naturalization Act, become British subjects. The position that Your Honour's Ministers and Legislature have assumed upon this subject is one of grave objection to any one of the class of persons mentioned in the section, being placed upon the voters list.

The undersigned observes that the Minister expresses the hope "that this matter will be further considered by the Provincial Legislature, and such amendments made as may be necessary to remove the objections herein stated."

With respect to this, in view of the opinion that the undersigned has already expressed, and with the knowledge that Your Honour's Ministers have of the feeling throughout the province, and also the views of the majority of the Members of the Legislature, perhaps the whole of them, Your Honour's Ministers cannot recommend, nor take the responsibility of adopting the suggestion of the Minister of Justice that the matter should be further considered by the legislature. The only way in which Your Honour's Ministers would feel justified in testing the views of the legislature would be by bringing down the report of the Minister of Justice and asking for an expression of opinion, but the undersigned is quite certain as to what the result would be, and hence it seems hardly proper to subject the views of the Minister of Justice to such a severe test. The general consensus of opinion throughout the province is very strongly in support of the view that these persons should not be permitted to be on the voters' list. As the Minister of Justice points out, disallowance would not

change the law upon the subject, and that the province has the undoubted right to prohibit any person or set of persons from being placed upon the voters' list has been determined by the Privy Council in the case of *Cunningham vs. Tomey Homma*, reported in *Appeal Cases*, 1903, page 151.

Chapter 39 is an Act to amend the Coal Mines Regulation Act, and is intended for the purpose of interpreting the words "Chinaman" and "Chinese" when used in connection with the Act. The words "Chinaman" and "Chinese," in the Province of British Columbia have been used very largely to express the idea of race rather than nationality, and it was for the purpose of obviating any doubt upon this subject that this short Act was passed.

The question whether section 82, rule 34 is within the powers of the Provincial Legislature is one of the matters which are now pending before the Judicial Committee of the Privy Council; therefore, the undersigned hopes that the Act will not be disallowed, but that all questions as to its constitutionality may be left to be determined by the judicial tribunal at present seized of the whole question.

The Minister of Justice will, in due course, be served with a copy of the proceedings, and will have an opportunity if desired, of appearing before the Privy Council, or of instructing counsel in the matter.

Dated the 19th day of January, A.D. 1905.

CHARLES WILSON,
Attorney General.

Copy of a Report of a Committee of the Executive Council, approved by the Lieutenant Governor on the 26th day of January, 1905, and transmitted to the Secretary of State by the Lieutenant Governor on 27 January, 1905

The Committee of Council have had before them a report herewith, dated January 19, 1905, from the Attorney General, upon a report of the Minister of Justice of October 29, 1904, approved by the Governor General on November 16 last, in which exception is taken to the provision contained in section 5 of chapter 15 of the Statutes of British Columbia, 1903-1904, intituled "An Act respecting the Constitution, Practice and Procedure of the Supreme Court of British Columbia, and for other purposes relating to the Administration of Justice."

The committee concur in the observations of the Attorney General and submit the same for approval.

CHARLES WILSON,
Clerk, Executive Council.

To His Honour the Lieutenant Governor in Council:

The undersigned has the honour to refer to the letter of His Honour the Lieutenant Governor to the Provincial Secretary, dated December 1, 1904, inclosing a copy of the report of the Minister of Justice upon chapter 15 of the Statutes of British Columbia for 1903-1904, being the Supreme Court Act.

The absence of the undersigned attending the Judicial Committee of the Privy Council is the cause of the delay in the matter receiving the attention which it deserves.

The Act in question is an Act respecting the Constitution, Practice and Procedure of the Supreme Court of British Columbia, and is a consolidation and revision of all the statutes on the subject up to the time when it was passed. It was not treated as a controversial measure in the House, and with one or two exceptions was practically assented to by all the members of the legislature who took any interest in the subject.

The provision objected to is one contained in section 5 to the effect that persons appointed to the position of judges of the Supreme Court, shall be barristers of not less than ten years' standing, five of which shall have been spent in actual practice at the bar of this province.

It is submitted with the utmost confidence that the provision is a reasonable one. It was part of the Statute Law of British Columbia from 1878 to 1899, when it was repealed for party purposes. It appears in the Revised Statutes of Ontario, 1897, chapter 21, s. 3, SS. (6), except that ten years actual practice at the bar of Ontario is required, instead of five as in the section under discussion.

The undersigned regrets that he cannot assent to the proposition of the Minister of Justice that the section is *ultra vires* of the province. Even if it were, it is submitted that that is no reason for the disallowance of the measure, but that it should be left to its operation and the determination of the courts. If, however, the Minister of Justice proposes to recommend the disallowance of the Act as being contrary to the policy of the Dominion Government, then that is a reason of a paramount character, and the undersigned has nothing further to say on the subject.

In any event the Act is one of so great importance to this province, and its disallowance now and re-enactment next session would possibly create so much trouble and perhaps litigation, with consequent expense, there seems to be no course left to Your Honour's Ministers, in view of the threat of disallowance, but to assent to the terms on which the Act will be allowed, namely a promise to repeal the section at the next session of the Legislature.

Dated this 19th day of January, 1905,

CHARLES WILSON,
Attorney General.

(Approved 14 February, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, February 4, 1905.

To His Excellency the Governor General in Council:

The undersigned referring to his report of 29th October last with regard to Chapter 15 of the Acts of British Columbia, 1904, intituled "An Act respecting the Constitution, Practice and Procedure of the Supreme Court of British Columbia, and for other purposes relating to the administration of Justice," has had under consideration the report of the Executive Council of British Columbia, approved by the Lieutenant Governor on 26th ultimo, concurring in the report of the Attorney General of the province upon the despatch of Your Excellency's Government, by which the Attorney General states, after reviewing the circumstances from his point of view, that there seems to be no course left but to assent to the terms on which the Act will be allowed, viz., a promise to repeal section 5 at the next session of the Legislature.

The undersigned regarding this as an assurance of the Government of British Columbia that the clause in question will be so repealed, recommends that no further action will be taken by Your Excellency's Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

5 EDWARD VII., 1905

CANADIAN MANUFACTURERS' ASSOCIATION,

TORONTO, March 29, 1905.

HON. CHAS. FITZPATRICK,
Minister of Justice,
House of Commons, Ottawa.

MY DEAR SIR,—This association has learned with deep regret that the Legislature of the Province of British Columbia has seen fit to pass an Act imposing a tax on representatives of outside firms doing business in that province. Supporting the views of our association, I may say that, as a Dominion organization, we are desirous of removing all extra provincial laws which tend to diminish the transaction of business between the various provinces of the Dominion. All such laws we look upon as unnatural barriers tending to separate provinces which should be more closely drawn together.

In the expression of this view, the following resolution was adopted at the last annual convention of this association held in Montreal last September:—

“That during the coming year the subject of extra provincial legislation should receive special attention from the branches of this association, and an effort made to remove such obstacles to trade, and to encourage the freest possible intercourse between the producers and consumers of all the provinces.”

It is therefore our sincere hope that the British Columbia Bill referred to may not become law, and we will heartily appreciate such steps as you may take in this direction. With thanks in anticipation of your kind consideration of this matter,

I have the honour to be,

Your obedient servant,

R. J. YOUNGE,
Secretary.

*Resolution passed at a meeting of the Victoria Liberal Association 13 April, 1905,
and transmitted to Minister of Justice on 14 April, 1905*

Whereas, the legislature of the province of British Columbia saw fit to provide at the late session of the House, to impose a tax on commercial travellers representing firms outside the boundary of the province. And exception has been taken to this legislation by people residing outside of the province, who, it is reported to this association, have sent deputations to the government at Ottawa, asking for the disallowance of the Act.

Therefore, be it resolved that this, the Liberal Association of the city of Victoria, say that the actions of the said deputations are unwarrantable interference with the domestic affairs of British Columbia, and that they would deprecate any action of the Dominion Government in compliance with the request for interference as an uncalled for invasion of provincial rights.

And that a copy of this resolution be sent to the Minister of Trade and Commerce, Minister of Justice, and the senators and members for British Columbia.

(Approved 28 April, 1905)

DEPARTMENT OF JUSTICE, OTTAWA, April 19, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following statutes of the Legislative Assembly of British Columbia, assented to on 8th instant, and received by the Secretary of State for Canada on 19th instant, viz:—

No. 28, "An Act to regulate immigration into British Columbia";

No. 30, "An Act relating to the employment on works carried on under franchises granted by Private Acts";

No. 35, "An Act further to amend the 'Coal Mines Regulation Act.'"

Former enactments of these statutes by the Legislative Assembly of British Columbia have upon previous occasions been fully commented upon and disallowed, and the views of Your Excellency's Government with regard to them are well known.

The undersigned does not consider it expedient that the present enactments should remain in force, and the fact that the assembly continues to re-enact these statutes after full discussion, and after they have been several times disallowed, shows that it would be a mere waste of time to communicate with the Provincial Government with a view to a repeal or modification of these Acts at the hands of the assembly.

The undersigned recommends accordingly that each of the statutes above mentioned be disallowed, and that the Lieutenant Governor of British Columbia be informed of the action taken by Your Excellency's Government

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Chapters 28, 30 and 35 disallowed accordingly on 28 April, 1905

HALIFAX, N.S., June 5, 1905.

Hon. CHARLES FITZPATRICK,
Minister of Justice.
Ottawa.

DEAR SIR,—In connection with the legislation of the Province of British Columbia imposing a tax on commercial travellers from other parts of Canada doing business in that province, I understand certain protests have been made to you in connection with the said legislation, and that the Dominion government has been asked to exercise a veto. I am instructed by the executive of the association to support the efforts which are being made to have this legislation annulled, and I trust that it may be deemed expedient by your department to veto the Act referred to.

G. E. FAULKNER,

Secretary.

OTTAWA, March 30, 1905.

The Right Honourable
SIR RICHARD J. CARTWRIGHT,
Minister of Trade and Commerce.

HONOURABLE SIR,—The undersigned representatives of the various Commercial Travellers' Associations of Canada, in convention assembled at Ottawa this day, adopted the following resolutions:—

Whereas the Legislature of British Columbia has passed a Bill (which now awaits the signature of the Lieutenant Governor in order to become law) imposing a

tax of \$100 on all commercial travellers soliciting orders in that province who are not residents thereof, and

Whereas such a tax on commercial travellers would have a great tendency to unduly restrict trade, we desire to put ourselves on record as strongly opposed to any special tax that would seriously affect the trade and commerce of the Dominion.

We, therefore, pray that the Dominion Government, of which you are the honoured representative, may intervene and prevent this obnoxious license becoming law.

T. McQUILLAN,

*President Commercial Travellers'
Association of Canada, Toronto.*

and 12 others.

MONTREAL, June 14, 1905.

The Honourable CHARLES FITZPATRICK,
Minister of Justice,
Ottawa, Ont.

HONOURABLE SIR,—Ever since the new law recently enacted by the province of British Columbia taxing commercial travellers \$50 for entering that province to solicit orders for goods, we have received numerous complaints from the members of the association protesting against this obnoxious license which that province has seen fit to impose, and while they may be acting within their rights by imposing such a license, it is doubtful if their object which is to increase the revenue of the province will be accomplished, as this fetter to trade and commerce will deter many commercial travellers from going to British Columbia.

On March 30 last a strong deputation representing the various Commercial Travellers' Associations in Canada, waited on the Honourable Minister of Trade and Commerce as well as the Finance Minister, to whom we made known our grievance and registered our solemn protest, suggesting to them that when the question of provincial subsidies comes before the House that the recent action of British Columbia be borne in mind, and if possible a compromise be made by granting a certain amount, provided the tax on commercial travellers be done away with. This, sir, seems to be a reasonable way to get over the difficulty, and we would respectfully ask you to bear this suggestion in mind when it comes before your department.

I have the honour to be, sir,

Your obedient servant,

H. W. WADSWORTH,
Secretary.

(Approved 28 June, 1905.)

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DEPARTMENT OF JUSTICE, OTTAWA, June 13, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration an Act of the Legislative Assembly of British Columbia, assented to April 8, 1905, intituled "An Act for licensing commercial travellers."

The Act provides in effect that no commercial traveller, agent or other person not being a resident or domiciled in British Columbia, shall take or solicit orders either

for himself or any other person for any goods, wares or other effects to be imported into the province to fill such orders unless he shall have procured a license therefor, for which a fee of \$100 or \$50 according to the class of goods, concerned is payable every six months. The Act prescribes a penalty not exceeding \$100 in addition to the license fee for soliciting or taking orders contrary to its provisions.

The undersigned has received correspondence objecting to this Act from the Commercial Travellers' Association of Canada, the Canadian Manufacturers' Association and the Maritime Commercial Travellers' Association. These bodies claim that the Act should be disallowed as *ultra vires*, because it interferes with or restricts inter-provincial trade, and discriminates against commercial enterprises established outside of the province.

The undersigned considers that these are grave objections. It is true of course that a province may raise a revenue for provincial purposes by direct taxation within the province. The Dominion parliament has, however, exclusive authority to regulate trade and commerce throughout the Dominion, and the provincial power must not, in the opinion of the undersigned, be executed in such a manner as to trench upon the paramount authority of parliament. It is obvious that a large license fee payable at frequent intervals, such as is required by the Act in question, exacted from the agents of persons or companies domiciled out of the province where no corresponding fee is required from those within the province must operate to discourage trade between British Columbia and the other provinces, and it would seem perhaps to be intended for the protection of those resident within the province rather than for the purpose of raising a revenue for provincial purposes. These considerations lead the undersigned to doubt whether the Act is within the scope of provincial powers.

It is provided by the British North America Act, 1867, section 121, that all articles of the growth, produce or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces. It would be impossible, therefore, for the province to impose a direct tax or duty upon goods imported from another province. The provision complained of seems, however, to have indirectly very much the same effect, inasmuch as the selling of these goods within the province by a person not resident or domiciled therein made the subject of a considerable charge.

There is also the further question as to whether taxation of this character imposed by way of license fee upon agents soliciting orders for the sale of goods on behalf of other people is direct taxation. It is plainly not a tax intended to be ultimately borne by the persons who are primarily required to pay.

The undersigned considers that these objections should be communicated to the Lieutenant-Governor of British Columbia, so that his Government may have an opportunity to consider and report upon them, stating any reasons, facts or circumstances which it deems proper in support of the legislation. As to whether or not the statute apart from the question of its constitutional validity should be allowed to remain in operation is of course a matter of policy for the consideration of Your Excellency's Government.

The undersigned recommends, therefore, that a communication in accordance with this report be sent to the Lieutenant Governor of British Columbia, and after receiving his reply the matter may again be referred to the undersigned.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

TORONTO, June 28, 1905.

The Minister of Justice,
Ottawa, Ont.

SIR,—We have the honour to direct your attention to legislation passed by the Province of British Columbia and being Chapter 11 of the Statutes of 1905, being "An Act to amend the Companies Act, 1897." We particularly refer to section 2, which is as follows:—

"The fee to be paid by such Extra-Provincial Company for such license shall be two hundred and fifty dollars, and no more, and any such Extra-Provincial Company having obtained a license under said repealed section 125 shall be credited with the amount paid for same, on obtaining a license under this section."

The Crown Life Insurance Company have an office and are doing business in British Columbia, and hold a statutory charter, they being incorporated by Dominion Act.

That company desires to lay before you the following extract from a report given by Sir John Thompson, then Minister of Justice for the Dominion, dated 28th March, 1887, as follows:—

"Although any company incorporated by the Parliament of Canada must within any province within which it is carrying on its business be subject to all laws enacted by the Provincial Legislature (within its legislative authority), in the opinion of the undersigned, it is not within such legislative authority to provide that such a company shall not do business within the province without taking out a license for that purpose."

And also an extract from Lefroy, on Legislative Power in Canada, at p. 624, as follows:—

"Ministers of Justice have always strenuously objected to provincial Acts imposing the necessity upon companies incorporated under the laws of the United Kingdom or of the Dominion, of taking out a provincial license before doing business in the province; and when such Acts have contained express prohibitory provisions forbidding the doing of business without obtaining such license, they have been disallowed, the ground being distinctly taken that they are *ultra vires*, although other grounds of objection to them are also assigned."

Before deciding to pay the license fee we desire to know whether you take the same view that Sir John Thompson did, and whether in that case you will advise that the Act shall be disallowed.

You will note that in the portion of the Act objected to a company is disabled from doing business after *the first of July, 1905*, unless they comply with that Act, and our company is desirous to say that if, notwithstanding the pressure of parliamentary business you can give it attention before that date, it will save many complications.

We have the honour to be, sir,

Your obedient servants,

McMURRICH, HODGINS & McMURRICH.

DEPARTMENT OF JUSTICE, OTTAWA, June 29, 1905. .

Messrs. McMURRICH, HODGINS & McMURRICH,
Barristers, Toronto.

GENTLEMEN.—I am directed by the Minister of Justice to acknowledge receipt of your letter of the 28th instant, received this morning, 29th, asking that the Government will give its attention to an Act passed by the Province of British Columbia, being Chapter 11 of the Statutes of 1895 (presumably 1905), entitled "An Act to amend the Companies Act, 1897," with a view to disallowing the same before the 1st of July next.

In reply I am to inform you that it is altogether impossible to accede to your request. The time for consideration by this department and afterwards by the Privy Council, and for obtaining His Excellency's assent to a disallowance of the Act, if such a course should be recommended, before the 1st of July next is altogether insufficient.

I may add that the Government have until April 21, 1906, to consider the question of disallowance.

I have the honour to be, gentlemen,

Your obedient servant,

A. POWER,
Acting D.M.J.

(Transferred to Minister of Justice, 7 July, 1905.)

THE WESTERN ONTARIO COMMERCIAL TRAVELLERS' ASSOCIATION.

LONDON, CANADA, July 6, 1905.

The Honourable Sir RICHARD CARTWRIGHT,
Ottawa, Ont.

SIR,—I have the honour to inform you that I have been instructed by the executive of this association to request that the Government will disallow all the recent legislation of Provincial Legislature imposing a license tax on commercial travellers, as we believe that all such legislation is in restriction of interprovincial trade, and a serious source of annoyance and irritation to the commerce of the Dominion.

Trusting that this will meet with your favourable consideration,

I have the honour to remain, sir,

Your obedient servant,

ALF. ROBINSON,
Secretary.

(Transferred to Minister of Justice, 8 July, 1905.)

DOMINION COMMERCIAL TRAVELLERS' ASSOCIATION,

MONTREAL, July 7, 1905.

Sir RICHARD CARTWRIGHT,
Minister of Trade and Commerce,
Ottawa, Ont.

HONOURABLE SIR,—We are very much pleased to notice by the reports in the press that the Federal Government has forwarded a communication to the Executive of the British Columbia Government, inviting them to withdraw the Statute that it passed

at a recent session of its Legislature imposing a tax of \$50 on all commercial travellers from other provinces, and we sincerely believe this report to be true. If the provincial authorities do not feel like responding to the request we trust the Federal authorities will exercise their power and veto the Act.

We also trust that your honourable body will take the same action with regard to the \$300 tax recently imposed by the Quebec Legislature on all commercial travellers not residing in the province who represent foreign houses not having a branch or place of business in Canada. We are constantly receiving correspondence from travellers in the United States, as well as personal inquiries from travellers who reside in sister provinces who arrive here to do business, and when confronted with a \$300 tax it is simply prohibitive, and they pack up and leave. With such conditions prevailing it is not unlikely that other provinces will retaliate with a similar measure, and interprovincial trade would be seriously hampered, and a restriction put upon trade and commerce that would affect the whole Dominion.

We need not point further to the serious aspects of this question; they are no doubt quite apparent to you. Our object in writing is to register our solemn protest against these obnoxious laws taxing commercial travellers, and thereby hindering the free intercourse of trade which we are anxious to see extended in this fair Dominion of ours, and we trust, sir, you will do all in your power to meet our views in this matter.

I have the honour to be, sir,

Your obedient servant,

H. W. WADSWORTH.

(Transferred to Minister of Justice, 10 July, 1905.)

THE NORTHWEST COMMERCIAL TRAVELLERS' ASSOCIATION OF CANADA,

WINNIPEG, July 5, 1905.

Hon. Sir RICHARD CARTWRIGHT, G.C.M.G.,
Minister of Trade and Commerce,
Ottawa, Ont.

HONOURABLE SIR,—Referring again to license tax imposed on travellers in British Columbia, and similar proposed legislation in Quebec, this association would again enter a most solemn protest against the Federal Government permitting such pernicious legislation to stand. It is diametrically opposed to the intent and spirit of Confederation, and is besides causing very unwelcome and unfriendly criticism both in the Old Land and by our neighbours to the south. It is detrimental to the free intercourse and freedom of trade which should be maintained between the various provinces of the Dominion. The source of this legislation is very evidently not the right one, as the boards of trade and kindred commercial organizations have condemned it in all the provinces, showing clearly that from a business point of view it is bad for the Dominion as being in restraint of interprovincial trade. Trusting that your most favourable consideration will be given this important matter, and that immediate steps will be taken to put a stop to this obnoxious tax.

Yours respectfully,

NORTHWEST COMMERCIAL TRAVELLERS' ASSO. OF CANADA.

FRED J. C. COX,

Secretary.

BRITISH COLUMBIA

(Transferred to Minister of Justice, 10 July, 1905)

THE MARITIME COMMERCIAL TRAVELLERS' ASSOCIATION,

HALIFAX, N.S., July 6, 1905.

HON. SIR RICHARD CARTWRIGHT,
Minister of Trade and Commerce,
Ottawa, Ont.

DEAR SIR,—I am instructed by the executive of this association to direct your special attention to the Act of the Legislature of British Columbia imposing a tax or license upon commercial travellers from other provinces of the Dominion who do business in that province. This association, in conjunction with other commercial bodies here and elsewhere, protested vigorously against the enactment of this law, but our protests were unavailing. The question has been raised as to whether legislation of this character is *intra vires* of local legislatures, but in any case we regard it as very obnoxious, tending as it does to hamper and interfere with an unrestricted commerce between the two provinces. We therefore ask that the Dominion Government consider the expediency of disallowing the Act, and we beg respectfully to request that as Minister of Trade and Commerce you will give the matter your earnest consideration, and if possible support the request for a veto on the Act referred to.

Yours truly,

G. E. FAULKNER,

*Secretary.**(Transferred to Minister of Justice, 15 July, 1905)*

LONDON, July 4, 1905.

The Right Honourable the Minister of Trade and Commerce,
Ottawa, Canada.

SIR,—I beg to send herewith for your perusal, copy of a letter from Messrs. J. B. Lewis and Sons, Limited, of Stanford Street, Nottingham, in reference to the new law passed by the Quebec Legislature providing for a \$300 tax on commercial travellers.

The communication in question is one out of quite a number that has reached me on the matter, and indicates the general feeling among business houses who are in the habit of sending travellers to Canada to represent them.

I am, sir, your obedient servant,

STRATHCONA,

High Commissioner.

J. B. LEWIS & SONS, LIMITED,

STANFORD STREET, NOTTINGHAM, June 28, 1905.

DEAR SIR,—Referring to the recent impost of \$300 for a license to sell goods in the State of Quebec, we beg herewith to supplement the interview you kindly granted our representative, and to point out that this will press very hardly on manufacturers of staple products such as hosiery. We respectfully suggest that this action will not make for increase of trade or tend to foster the acquaintance and confidence so desirable between manufacturer and buyer.

We are continually told, "Do not rely on agents, come yourselves and study our market and requirements," and following this policy we have recently given up our resident agents with the intention of one of our principals making two trips each year.

This tax will be a serious item in the expenses as the competition prevents any but the barest profits.

Under the above circumstances we should esteem it a favour if you could ascertain what constitutes, in the eyes of the Quebec Legislature, "a place of business." Would an arrangement with any resident agent having an office come under this head and if so is it necessary to prove that such person is really selling the goods and getting commission on the sales? Otherwise it would appear that only a brass plate and the use of a resident's name is required in order to evade the tax.

Your kind interest will be much appreciated, as we are naturally unwilling to pay what a less scrupulous competitor might succeed in escaping.

Yours very respectfully,

J. B. LEWIS & SONS, LIMITED,

J. L. LEWIS, C.

(Transferred to Minister of Justice, 15 July, 1905.)

COMMERCIAL TRAVELLERS' ASSOCIATION OF CANADA,

TORONTO, July 14, 1905.

Rt. Hon. Sir RICHARD CARTWRIGHT,
Minister of Trade and Commerce,
Ottawa.

DEAR SIR,—Your esteemed favour of the 6th instant to hand and noted. I trust that you have been able to get into the matter of the license tax on commercial travellers in the provinces of British Columbia and Quebec, and that the reports in the daily press are true that the Acts will be disallowed and we shall receive speedy relief. Since writing you regarding the Quebec tax, I have fuller particulars before me, and from inquiries made find it will be more objectionable than we first thought. The Act provides that a person not residing in the Province of Quebec representing one or more concerns not having a place of business in Canada is required to pay a tax of \$300 per year for each firm represented. This will affect several hundred members of our and other associations who are residents of other provinces than Quebec, pay taxes, and in some cases renting expensive offices and employing a staff of clerks but not actually carrying stock for delivery, whereas a resident of the Province of Quebec is not required to pay this tax. This we claim is most unfair, and while we object to the tax in any form, its most objectionable feature is that it relieves the resident of the Province of Quebec and taxes the residents of every other province. There is a growing feeling of retaliation here, and we certainly think the Federal Government should step in and disallow provincial taxes of this kind.

When our deputation interviewed Mr. Fielding, he gave us to understand that if the British Columbia tax should be a barrier to trade and commerce, they might have good ground for disallowing it. One of our members called to see me two days ago who represents fifteen foreign houses, and according to Mr. McCorkill's construction of the Act, this man would be required to pay a tax of three hundred dollars per year for each and every house he solicited business for. You will readily see that this legislation interferes with trade and commerce. As we understand, the tax is to be put in effect at once, we trust that some prompt action will be taken by your Government.

Thanking you for the interest you have taken in this matter, and anticipating a favourable reply, I have the honour to be,

Yours faithfully,

T. McQUILLAN,

President.

PINGSTON CREEK LUMBER COMPANY, LIMITED,

REVELSTOKE, B.C., July 16, 1905.

The Honourable the Minister of Justice,
Ottawa, Ont.

SIR,—I have the honour to inclose a copy of the British Columbia Land Surveyor's Act, 1905, passed during the last session of the British Columbia Legislature, also a letter written by myself respecting this new Act which appeared in the *Victoria Colonist* of the 14th inst.

I write to ask your consideration of the Act, particularly section 10, subclauses (b) and (d), and section 40. The remarks in my letter respecting these clauses are marked in ink.

As a surveyor I consider this Act as a whole, and particularly as to the sections mentioned, to be most unjust, and I hope *ultra vires*. This point is I believe a matter for your judgment; hence my troubling you.

I have the honour to be, sir,

Your obedient servant,

J. A. KIRK.

(Extract referred to in foregoing letter.)

The board is authorized to "prevent and conciliate all misunderstandings between land surveyors, to hear and decide all complaints and accusations preferred by third parties against them in relation to their professional conduct, and to punish any land surveyor found guilty of the facts alleged in said complaint or accusation according to the gravity of the offence, by censure, by depriving him of the right of voting or by cancelling or suspending his commission as a land surveyor of the province of British Columbia. The Board may in its discretion suspend for such a time as it shall think fit, or cancel the commission of any provincial land surveyor whom it finds guilty of gross negligence or corruption in the execution of the duties of his office; but such action shall not be taken without such surveyor having been previously summoned in order to be heard in his defence, nor until the board has heard the evidence offered, both in support of the complainant and on behalf of such surveyor." The board has the power "to order any land surveyor practising in this province to appear before the board when the same is deemed necessary." Decisions of the board are subject to appeal to the full court.

Here we have virtually a criminal court, for its office is to punish. Those subject to its jurisdiction may innocently—there being no schedule of offences—be guilty in the eyes of the board of a serious offence.

This extraordinary power is given to an elected court, sensitive to the small and irresponsible body of men who put its members in office, without authority to take evidence under oath—to summon witnesses or compel their attendance; it hears whatever may be offered to it in the way of evidence; determines what are and what are not offences; and inflicts what it considers suitable penalties, ranging from simple censure to taking away the defendant's means of earning a livelihood.

An ordinary individual accused of an offence is arraigned before a court held in the neighbourhood in which he resides; while he is assured of protection from injustice. But a surveyor can be forced to go to Victoria from the most remote corner of this province to defend himself. Presumably he must pay his own expenses and those of his witnesses. And he must perforce submit to the idiosyncrasies of untrained judges given as "decisions" after hearing unsworn testimony.

It will be interesting to note who will be willing to assume the responsibilities of membership on this board.

(*Transferred to Minister of Justice 21 August, 1905.*)

MONTREAL, Aug. 18, 1905.

The Right Hon. Sir RICHARD J. CARTWRIGHT, G.C.M.G.,
Minister of Trade and Commerce,
Ottawa, Ont.

SIR,—I have the honour to inclose herewith copy of resolution passed at a meeting of delegates of all the Commercial Travellers' Associations of Canada, held at the Windsor Hotel, Montreal, Tuesday, August 15, 1905, and to which we beg your consideration.

Your obedient servant,

JAS. M. DOUGALL, *Pres. D.C.T.A.,*
Chairman.

MONTREAL, August 17, 1905.

A meeting of delegates of all the Associations of Commercial Travellers of Canada took place at the Windsor Hotel, Montreal, Tuesday, August 15, 1905, at 6 p.m. Present:—

Mr. J. S. N. Dougall, President, Dominion Commercial Travellers' Association.
Mr. Thos. McQuillan, President, Commercial Travellers' Association of Canada.
Mr. J. L. Hetherington, President, Maritime Commercial Travellers' Association.
Mr. W. R. Grant, President, Western Ontario Commercial Travellers' Association.
Mr. John Horne, President, Northwest Commercial Travellers' Association.
Mr. H. W. Wadsworth, Secretary, Dominion Commercial Travellers' Association.
Mr. Jas. Sarjeont, Secretary, Commercial Travellers' Association of Canada.
Mr. Alp. Robinson, Secretary, Western Ontario Commercial Travellers' Association.
Mr. Geo. E. Faulkner, Secretary, Maritime Commercial Travellers' Association.
Mr. F. J. C. Cox, Secretary, Northwest Commercial Travellers' Association.

On motion, Mr. J. S. N. Dougall was elected chairman, and Mr. F. J. C. Cox, Secretary.

The Acting Secretary introduced the following motion, which after a short discussion was on motion of Mr. John Horne, President of the Northwest Commercial Travellers' Association, seconded by Mr. J. L. Hetherington, President of the Maritime Commercial Travellers' Association, unanimously adopted:—

"This meeting of the representatives of the Commercial Travellers' Associations of Canada unanimously resolved that the legislation enacted by three of the provinces placing a tax on commercial travellers is detrimental to the interests of our several associations and the members thereof, also the large commercial interests which they represent. This legislation also appears to us contrary to the spirit of Confederation, it being in restraint of that freedom of trade and commerce which is so essential between the various provinces of our Dominion. We would therefore at this joint meeting again place ourselves on record as decidedly opposed to this legislation, and in the continued hope and expectation that His Majesty's Government of the Dominion will not permit such legislation to remain on the statute book of any of the provinces."

Resolved that a copy of this resolution be sent to the Right Hon. Sir Richard J. Cartwright, G.C.M.G., Minister of Trade and Commerce, and the Right Hon. Sir Wilfrid Laurier, Premier of Canada; also to the press.

The meeting then adjourned to meet again next year on a date to be arranged.

Copy of a Report of a Committee of the Executive Council, approved by the Lieutenant Governor on the 22nd day of August, 1905, and transmitted to the Secretary of State by the Lieutenant Governor on 24th August, 1905.

To His Honour the Lieutenant Governor in Council:

The Committee of the Council have had under consideration a report of the Minister of Justice, approved by His Excellency in Council, upon an Act of the Legislative Assembly of British Columbia passed at its last session, intituled "An Act for Licensing Commercial Travellers," and have the honour to report as follows:—

The Committee note the suggestion of the Honourable the Minister of Justice, namely, that Your Honour's Government should have an opportunity to consider and report upon the objections mentioned in the approved report of the Minister.

The Committee, therefore, desire to state that the primary object of the tax is to increase the revenue by imposing a license fee upon persons who, subject to no other taxation, are carrying on business within the province. Those resident within the province pay license fees in addition to other taxes: e.g., income, real property and personal property. It is respectfully submitted then, that it is only fair that those residing without the province, but carrying on business within the province, and who do not pay taxes on either income or personal property, and who perhaps own no real property, should likewise contribute their fair share of the revenue.

The Committee respectfully protest against the prevailing system of private corporations asking His Excellency the Governor General in Council to disallow provincial legislation on the ground that it is *ultra vires* of the Provincial Legislature. If it be *ultra vires*, then it is respectfully submitted, the Commercial Travellers' Association of Canada, the Canadian Manufacturers' Association and the Maritime Commercial Travellers' Association are competent to test the question before the proper tribunals. If the Act in question should be contrary to the policy of His Excellency's Government, then Your Honour's Government can only further respectfully protest against a policy that interferes with the already limited right of the province to provide a revenue for provincial purposes by direct taxation. Apart from the question of Dominion policy, the real question seems to be, is the proposed taxation direct or indirect? To suggest that indirectly the tax would operate prejudicially to the free interchange of products between the several provinces, and that the tax is not intended to be ultimately borne by the persons who are primarily required to pay, is to state the final result of the original Act. The same result would follow from nearly all direct taxation. The merchant, in fixing prices, considers his license fees and the personal property tax on his goods. The auctioneer and the publican, in measuring the value of their services or the price of the article sold, are bound to consider their license fees. In fact all persons paying license fees must take them into account when considering the expenses of their business. The retail trader is, perhaps, the best example. He pays a license to carry on business; his stock in trade is taxed as personal property; the land he occupies is taxed as real property. He is obliged then, when fixing the price of his goods, to add, among other items increasing their cost to the consumer, the license and taxes mentioned. So that it is, or may be—as stated by the Honourable the Minister of Justice—"ultimately borne, not by the persons who are primarily required to pay," but by the consumer; which, then is possibly the result of the taxes imposed. It never was the intention of the Legislature that any but the persons from whom the tax is demanded should pay or finally bear it. And it is respectfully submitted that it does not follow that, because a tax may ultimately be borne by another, that it is not a direct tax within subsection 2 of section 92 of the British North America Act. The Lords of the Privy Council, in *Bank of Toronto vs. Lambe*, discuss this question and point out that "The Legislature cannot possibly have meant to give a power of taxation valid or invalid according to its actual results in particular cases."

It is further respectfully submitted that, unless the Bill should be a clear and palpable attempt on the part of the province to invade the legislative field of the Dominion Parliament, Provincial Acts should not be disallowed by His Excellency the Governor General in Council, on constitutional grounds only. The effect of disallowance, except on the principle mentioned, is to make the Minister of Justice the highest judicial dignitary in the land for the determination of constitutional questions, and in reality above the Supreme Court of Canada. The decisions of the Supreme Court of Canada are open to question in the Judicial Committee of the Privy Council. From the decision of the Minister of Justice there is no appeal. He stands alone.

The committee further respectfully protest against the disallowance of Provincial Acts on the grounds of their being both *ultra vires* and contrary to Dominion policy. When disallowed upon the ground that they are *ultra vires*, either alone or in conjunction with the question of policy, then, for the purpose of maintaining the rights of the province under the British North America Act, Your Honour's advisers feel that such important and often doubtful points should be left to be determined by the judges, before whom they can be properly argued, and the respective legislative powers of the Dominion and the province be judicially determined.

The committee recommend that a copy of this minute, if approved, be forwarded to the Honourable the Secretary of State.

Dated this 15th day of August, A.D. 1905.

CHARLES WILSON,

Clerk, Executive Council.

Copy of a Report of a Committee of the Executive Council, approved by the Lieutenant Governor on the 22nd day of August, 1905 and transmitted to the Secretary of State by the Lieutenant Governor on 23th August, 1905.

To His Honour the Lieutenant Governor in Council:

The Committee of Council have had under consideration the despatch from the Acting Under-Secretary of State with respect to the enforcement of chapter II. of the Acts passed by the Legislature of British Columbia at its last session, which despatch was forwarded to the Provincial Secretary's Department by Your Honour's private secretary on the 11th of July, ultimo, and have the honour to report as follows:—

The Act is for revenue purposes only, and is an amendment of the Companies Act, 1897, and simply raises the fee for a license to extra-provincial insurance companies from \$25 to \$250. It is not an annual fee, but it is following a principle admitted in 1897 when the Companies' Act was first passed in its present form; that is, that the Provincial Legislature could properly require extra-provincial insurance companies to take out a license and to pay a fee for so doing. Nearly all the insurance companies doing business in the province are Dominion, Ontario or American companies. They take annually out of the province an immense sum of money. They are extra-provincial companies, and it was considered that they should contribute fairly to the revenue. Incidentally, it may be said, that it is a benefit to Canadian companies, as it will operate as a check on inferior American organizations.

The committee cannot but note that it is the Crown Life Insurance Company that asks for the disallowance of the Act; that is, a private corporation asks His Excellency the Governor General in Council to exercise the power of disallowing a provincial statute for their own private benefit. If the Minister advises that the Act is *ultra vires* of the province, then the committee respectfully refer to the observations contained in the Minute of Council, of even date, upon the subject of the proposed disallowance of the "Commercial Travellers' Licenses Act, 1905."

The committee have the honour to report that companies falling within the provisions of the Act had, before the despatch from the Secretary of State was received, been requested to comply with its requirements.

The Committee recommend that a copy of this minute, if approved, be forwarded to the Honourable the Secretary of State.

A. CAMPBELL REDDIE,
Deputy Clerk, Executive Council.

(Approved 30 September, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, September, 1905.

To His Excellency the Governor General in Council:

The undersigned referring to his report of April 19 last, approved by the Governor in Council on April 28 last, has the honour to state that the statutes of the Legislative Assembly of British Columbia thereby recommended to be disallowed were, as stated in the report, as follows:—

No. 67, An Act to regulate Immigration into British Columbia.

No. 81, An Act relating to the employment on works carried on under franchises granted by Private Acts.

No. 85, An Act further to amend the "Coal Mines Regulation Act."

The Order in Council based upon this report, however, refers to these statutes as chapter 67, chapter 81 and chapter 85. These statutes as chaptered, however, in the last volume of the annual statutes of British Columbia recently issued are not chaptered as stated in the Order in Council, their chapter numbers being instead chapter 28, chapter 30 and chapter 36 respectively. Lest any question should arise on account of this error as to the effect of the Order in Council and subsequent proceedings thereon, the undersigned recommends that the following statutes of the Legislative Assembly of British Columbia, assented to on April 8, 1905, and received by the Secretary of State for Canada on April 19, viz:—

No. 67, An Act to regulate Immigration into British Columbia, being chapter 28 of the Statutes of British Columbia, enacted at the last session of the Legislative Assembly thereof.

No. 81, An Act relating to the employment on works carried on under franchises granted by private Acts, being chapter 30 of the Statutes of British Columbia, enacted at the last session of the Legislative Assembly thereof.

No. 85, An Act further to amend the Coal Mines Regulation Act, being chapter 36 of the Statutes of British Columbia, enacted at the last session of the Legislative Assembly thereof, be disallowed, and that such disallowance be signified in the usual way.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

Chapters 28, 30 and 36 disallowed accordingly 16 October, 1905

The Hon. C. FITZPATRICK, K.C.,
Minister of Justice,
Parliament Buildings,
Ottawa.

TORONTO, October 4, 1905.

DEAR SIR,—Referring to my letter to you of the 7th ult., concerning the commercial tax. I cited a probable instance of a man having to submit to a vexatious defence. Such a case actually occurred during my visit to British Columbia last month.

About September 20, Mr. Cauldwell, manager of the Canada Paper Company, Montreal, visiting Victoria and staying with a friend took occasion to call upon a customer. The customer took occasion to settle a dispute of freight allowance and so forth. Then, asked Mr. Cauldwell if he had a certain kind of paper, and upon Mr. Cauldwell saying that he had one in his travelling bag, the customer asked to be allowed to see it; Mr. Cauldwell promising to call with it later; after doing so, upon leaving the store of his customer, he was accosted by the tax collector's deputy for the tax. Upon his stating that he was not on business and not soliciting business, he was threatened later with a fine by the collector, and finally had to appear before the commissioner to defend himself by the evidence of his customer.

The necessity of appearing before a commissioner caused him a delay on his return journey of a day. This might under some circumstances be a very serious matter, and if such actions are to be repeated, it would appear that a man must be fortified by a passport before travelling into other provinces.

Another instance where it may become a great hardship to an agent is where he has to meet customers from, say the Northwest or the lower provinces, in Montreal, which is a very common occurrence; he may not be selling goods for delivery in the province of Quebec, but is subject to the tax just the same.

I believe these instances are sufficient to show you the injustice as well as the incongruity of the tax.

Respectfully yours,

W. E. WHITEHEAD.
Per H.A.W.

(Approved 13 November, 1905)

DEPARTMENT OF JUSTICE,

OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the province of British Columbia, passed in the fifth year of His Majesty's reign, 1905, received by the Secretary of State for Canada on the 21st day of April last, and he is of opinion that these may be left to such operation as they may have, except the following, which have been or will be specially considered.—

Chapter 10, intituled: "An Act for licensing commercial travellers."

Chapter 11, intituled: "An Act to amend the 'Companies Act, 1897.'"

Chapter 18, intituled: "An Act further to amend the Supreme Court Act."

Chapter 25, intituled: "An Act further to amend the Game Protection Act, 1898."

Chapter 28, intituled: "An Act to regulate immigration into British Columbia."

Chapter 30, intituled: "An Act relating to the employment on works carried on under franchises granted by private Acts."

Chapter 36, intituled: "An Act further to amend the Coal Mines Regulation Act."

Chapter 45, intituled: "An Act respecting the Songhees Indian Reservation, Vancouver Island."

Chapter 61, intituled: "An Act to incorporate the British Columbia Securities Company," and

Chapter 64, intituled: "An Act to incorporate the General Trusts Corporation."

The undersigned has received a communication objecting to

Chapter 7, intituled: "An Act respecting Provincial Land Surveyors," upon the ground that it is unjust and perhaps *ultra vires*.

The undersigned, considering the objections so raised, is of the opinion, however, that they do not afford any ground for interference with the statute.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 26 May, 1906)

DEPARTMENT OF JUSTICE, OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned referring to the Order in Council of June 28 last has had under further consideration chapter 10 of the Acts of British Columbia, 1905, intituled:

"An Act for licensing Commercial Travellers" and also the despatch of the Lieutenant Governor of British Columbia, dated August 24 last, transmitting copy of an approved Minute of Council, dated August 22 last, with reference to the report of the undersigned upon the said chapter.

The undersigned is of the opinion that inasmuch as the Act in question proposes to raise a tax by means of licenses, the question of direct or indirect taxation may not arise, and it is, therefore, unnecessary to consider the argument of the provincial despatch upon that question.

Whether or not the Act is *ultra vires* upon any of the other grounds suggested in the previous report of the undersigned may conveniently be left for the determination of the courts.

Upon questions of policy the undersigned is not prepared to recommend disallowance.

The undersigned desires to add, however, that he cannot agree with the contention of the British Columbia government that the fact that there is no appeal from the decision of Your Excellency in Council in matters of disallowance affords a reason for refraining from exercising the jurisdiction which is plainly conferred.

The undersigned recommends, therefore, that the Act be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE,
OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 11 of the Statutes of British Columbia, 1905, intituled "An Act to amend the 'Companies Act, 1897.'"

Objection has been made to this Act on behalf of the Crown Life Insurance Company, which claims to be incorporated by Dominion Statute, and to have an office and be doing business in British Columbia. The objection is that the Act provides in effect that extra-provincial insurance companies shall not carry on business within the province without having taken out a license involving a payment of \$250. It is urged

that it is incompetent to a provincial legislature to provide that a company incorporated by the Dominion shall not do business within the province without taking out a license for that purpose.

The undersigned considers that it is a question which may conveniently be determined by the courts, and that for that reason, and in view of the past practice with regard to similar measures, he ought not to recommend disallowance.

The undersigned accordingly recommends that the Act be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 18 of the Acts of British Columbia, 1905 intituled "An Act further to amend the 'Supreme Court Act.'"

This Act provides that the persons to be appointed judges shall be barristers-at-law of not less than ten years' standing, of which ten years they shall have been for five years actively engaged in practice at the Bar of British Columbia.

A similar provision of the legislature of British Columbia at the session of 1903-4 was adversely commented upon by the undersigned, and in consequence repealed by chapter 17 of the Acts of 1905.

The legislature has, however, by the following chapter re-enacted the same provision.

This statute (chapter 18) is undoubtedly *ultra vires* for reasons which have been explained in previous reports, and the undersigned recommends that it be disallowed.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Chapter 18 was accordingly disallowed 13 November, 1905.

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 1, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 25 of the Statutes of British Columbia, 1905, intituled "An Act to amend the 'Game Protection Act, 1898.'"

This Act provides amongst other things that it shall be unlawful for any person to kill certain game birds or animals at certain times under penalties, and it contains other provisions for the protection of game.

The undersigned in view of the fact that Your Excellency's Government has not heretofore seen fit to disallow provincial game laws of similar character, and because questions arising thereon may be conveniently determined by the courts, does not deem it necessary at present to carefully consider the constitutionality of this Act, but in recommending that it may be left to such operation as it may have he reserves the

question as to whether such legislation is not within the exclusive authority of parliament as matter of criminal law.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 13 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 5, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 61 of the Statutes of British Columbia, intituled "An Act to incorporate the British Columbia Securities Company," and also chapter 64 of the British Columbia statutes for the same year, intituled "An Act to incorporate the General Trusts Corporation."

These statutes contain similar provisions incorporating each of these companies to carry on the business of a general trust company, and in particular among other things to accept, fulfil and execute all such trusts as may be committed to the company; to act as trustee in respect of securities issued by any municipal or other corporation in the province of British Columbia or elsewhere or by any province of Canada, or by the Dominion of Canada, and to establish local boards of directors or agencies either within British Columbia or elsewhere in such manner as the directors may from time to time appoint.

There is no express provision limiting the business of these companies to the province of British Columbia, and the fact that they are authorized to establish agencies outside of the province shows that it is the intention of the legislature that these companies may extend their business to other provinces.

The authority of a provincial legislature with respect to the incorporation of companies is limited by the British North America Act to the incorporation of companies with provincial objects. It was held by the Judicial Committee of the Privy Council in the case of *Loranger vs. The Colonial Building and Investment Association*, 9 Appeal Cases, 157, that the Parliament of Canada can alone constitute a corporation with powers to carry on its business consisting of various kinds throughout the Dominion. It is, therefore incompetent to the legislature of British Columbia to grant charters so broad as these, and the undersigned considers that unless these Acts are amended so as to limit the business of these corporations to the province of British Columbia, it would be his duty to recommend their disallowance.

The undersigned recommends, therefore, that a communication be sent to the Lieutenant Governor of British Columbia inquiring whether these two Acts will be so amended within the time limited for disallowance.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 17 November, 1905.)

DEPARTMENT OF JUSTICE, OTTAWA, November 10, 1905.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 45 of the Statutes of British Columbia, 1905, intituled "An Act respecting the Songhees Indian Reservation, Vancouver Island."

This Act recites that it is desirable that the Indians now occupying the tract of land within the city of Victoria known as the "Songhees Reserve" should be moved therefrom and rehabilitated elsewhere; that the consent of the Dominion Government is necessary for the removal of the Indians, and that such consent may be obtained after the present sitting of the Legislative Assembly has been prorogued, and that it is expedient that if and when the Indians are removed from the said lands, the Lieutenant Governor in Council should be authorized to dispose thereof.

The Act proceeds to provide, therefore, that upon removal by the Dominion Government of the Indians from the said lands it shall be lawful for the Lieutenant Governor in Council to dispose of such lands upon such terms and conditions as may be deemed advisable.

This Act can only operate, and as understood by the undersigned, is only intended to operate in the event of the interest of the Indians in the said reserve having been legally extinguished and the lands vested in the provincial Crown. In that event the statute is unobjectionable, but in so far as it is intended to operate, if it be intended to operate upon lands reserved for Indians, the Act is, of course, *ultra vires*.

The consent of the Dominion Government being clearly made a condition to the removal of the Indians, and the disposition by the Lieutenant Governor of the lands, the undersigned considers that the Act may be left to such operation as it may have, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province, for the information of his Government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor, 18 January, 1906.

PROVINCIAL SECRETARY'S OFFICE, VICTORIA, January 16, 1906.

His Honour the Lieutenant Governor.

SIR,—Referring to your letter dated November 27 last, with enclosures, I am directed to state that the objectionable features in chapters 61 and 64 of the Provincial Acts, 1905, mentioned in the report of November 1, from the Minister of Justice, will be struck out during the present session.

As a matter of fact, a Bill to amend the former statute intituled "An Act to incorporate the British Columbia Securities Company" was introduced and read a first time on the 11th instant.

I am, sir,

Your obedient servant,

A. CAMPBELL REDDIE,

Deputy Provincial Secretary.

OTTAWA, January 27, 1906.

His Honour

The Lieutenant Governor of British Columbia,
Victoria, B.C.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 16th instant, inclosing a copy of a letter from Mr. Campbell Reddie, your Deputy Provincial Secretary, with reference to chapters 61, 11, 25 and 64 of the Statutes of British Columbia, 1905, respecting which I, on November 20, communicated to you the

views of this Government and requested an assurance from your Ministers that these Acts would be amended in the sense indicated in the reports of the Minister of Justice within the time limited for disallowance.

I am directed to point out that Your Honour's reply does not meet the requirements of the case. The letter you inclosed is not even signed by Mr. Campbell Reddie, and in any event that gentleman is not one of Your Honour's Ministers, and therefore is not qualified to speak for them in a matter involving so grave a question of policy as the disallowance of legislation. What this government desires is a distinct assurance from Your Honour's responsible advisers on the points raised by the Minister of Justice.

I have the honour to be, sir,

Your obedient servant,

JOSEPH POPE,

Under-Secretary of State.

AT GOVERNMENT HOUSE, VICTORIA, B.C., February 7, 1906.

The Under-Secretary of State,
Ottawa, Canada.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 27th ultimo, with reference to chapters 61 and 64 of the Statutes of British Columbia, 1905, intimating that the view of my Ministers communicated to you in a copy of a letter from Mr. Campbell Reddie, the Deputy Provincial Secretary, did not meet the requirements of the case, owing to the fact that Mr. Campbell Reddie is not qualified to communicate their views on such a grave question of policy.

I therefore transmit to you herewith, a letter signed by the Honourable F. J. Fulton, the Provincial Secretary, bearing on the above subject.

I have the honour to be, sir,

Your obedient servant,

HENRI G. JOLY DE LOTBINIERE,

Lieutenant Governor.

PROVINCIAL SECRETARY'S OFFICE, VICTORIA, February 5, 1906.

His Honour the Lieutenant Governor.

SIR,—Referring to your letter dated November 27 last, with inclosures, I beg to state that the objectionable features in chapters 61 and 64 of the Provincial Acts, 1905, mentioned in the report of November 1, from the Minister of Justice, will be struck out during the present session.

I am,

Your Honour's obedient servant,

FREDK. J. FULTON,

Provincial Secretary.

From Mr. Lyttelton to Earl Grey.

DOWNING STREET, November 30, 1905.

MY LORD,—I have the honour to forward, for the consideration of your ministers, extract from a letter in which the Institute of Chartered Accountants call my attention to an Act which has recently been passed by the Legislature of British Columbia, incorporating an Institute of "Chartered" Accountants in that province.

2. I shall be glad to receive a copy of this Act at your earliest convenience. In the meantime, I would observe that if the Act, as I gather that it does, authorizes members of the Provincial Institute to use the initials which members of the English Institute are authorized to use by their Royal Charter, inconvenience and misunderstanding will be caused both here and in the province, and the members of the English institute will have serious ground for complaint.

3. I am aware that similar legislation is in force in Ontario, but your ministers will, I have no doubt, agree with me that the Ontario Statute ought not to be allowed to form a precedent.

I have, &c.,

ALFRED LYTTTELTON.

EXTRACT from a letter from Mr. Colville, Secretary of the Institute of Chartered Accountants, to the Under Secretary of State—dated October 20, 1905

I regret that the holidays have prevented your letter of August 31 being fully replied to before this date.

I do not think that it would be suggested that the use of the word "Chartered" should be taken away from those institutes which have received Acts of Incorporation from Canadian Legislatures, but we do respectfully submit that the attention of the Colonial Office should be given to the public inconvenience, which may arise not only at home but all over the Empire, from the multiplication of "Institute of Chartered Accountants," all of whom have apparently copied their title from that of this institute, being fully aware of the value of the title "Chartered Accountant," and the respect it commands in financial circles all over the world.

Even as recently as last month I was informed that an Institute of Chartered Accountants had been incorporated by Act of Legislature in British Columbia. Had it been possible earlier to have obtained an interview with the Colonial Secretary, it may be that we should have impressed him with the gravity of the point in a way which it is impossible to do by letter, and the incorporation of a new institute with this title might have been avoided.

I would here remark that so faithfully do these Canadian Institutes copy the title of this institute that they even adopt the use of the letters "F.C.A" and "A.C.A." the distinctive initials granted by the charter from the Crown.

We are quite aware that the colonial Acts have only legal effect in the colonies in which they are passed, but that does not prevent a colonial chartered accountant coming to Great Britain or Ireland and styling himself "Chartered Accountant," and it may perhaps not be within the Colonial Secretary's knowledge that the Board of Trade have expressed themselves strongly in favour of legal protection being given to the words "Chartered Accountant" in England, and have promised their earnest support to a Bill which has been introduced during the last two sessions, and of which I inclose a copy.

At this moment I am informed that an Australian institute is about to petition the Privy Council for a royal charter. We shall, of course, oppose this being granted without adequate protection being given to our title, and can always do so when such applications are made to the Privy Council itself; but in the case of colonial legislation (which is generally by private Bill), we are impotent by reason of distance, and I would point out that the legislation in question gives no guarantee as to the examinations which are to be passed, or the standard of professional ability required, which must of itself seriously affect the reputation which the title "Chartered Accountant" implies. That there is a danger of inadequate examination I can produce evidence to prove.

(Approved 10 January, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, December 22, 1905.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a despatch to Your Excellency, dated 30th ultimo, from the Right Honourable the Secretary of State for the Colonies transmitting extract from a letter, dated October 20 last, in which the Institute of Chartered Accountants call attention to an Act recently passed by the legislature of British Columbia incorporating an institute of chartered accountants in that province.

Mr. Lyttelton states that he would be glad to receive a copy of this Act at early convenience, and he observes in the meantime that if this Act authorizes members of the Provincial Institute to use the initials which members of the English Institute are authorized to use by their Royal Charter inconvenience and misunderstanding will be caused, both in England and in the province, and the members of the English Institute will have serious grounds for complaint. He adds that he is aware that similar legislation is in force in Ontario, but that your Excellency's ministers will, he has no doubt, agree that the Ontario statute ought not to be allowed to form a precedent.

The undersigned recommends that a copy of this report, if approved, and a copy of the extract from the letter of the Secretary of the Institute of Chartered Accountants of October 20 last, above referred to, be transmitted to the Lieutenant Governor of British Columbia, with a request that a copy of the British Columbia Act in question be forwarded immediately for transmission to the colonial office, and that he inform Your Excellency's Government as to what steps, if any, his Government proposes to take in respect to the said complaint.

Humbly submitted,

C. FITZPATRICK,

*Minister of Justice.**Transmitted to the Secretary of State by the Lieutenant Governor 12 February, 1906.*

PROVINCIAL SECRETARY'S OFFICE, VICTORIA, February 9, 1906.

The Private Secretary.

SIR,—Referring to your letter dated January 22, addressed to the Minister of Finance and which has been referred to me, I observe that the subject thereof relates to a private Act passed at the last session of the legislature, intituled the Chartered Accountants Act, 1905.

Your communication covers an extract from a letter from Mr. Colville, secretary of the Institute of Chartered Accountants, written to the Under Secretary of State for the Colonies. In transmitting the aforesaid His Honour inquires, for the information of the Secretary of State for Canada, what steps this Government proposes to take in respect of the complaint made in Mr. Colville's despatch.

In reply I have to request that you will intimate to His Honour the Lieutenant Governor that the executive having before them the report of the Minister of Justice to the Governor General in Council with respect to the Provincial Statutes of 1905, which was adopted by the Privy Council and approved by His Excellency on November 13, 1905, and in which report the Minister of Justice expresses the opinion that chapter

59 of the Statutes of 1905, and certain other Acts, may be left to such operation as they may have, it does not appear to this Government to be necessary to make any representation to the Secretary of State about the matter in question.

I am, sir,

Your obedient servant,

FRED J. FULTON,
Provincial Secretary.

From Lord Elgin to Lord Grey.

DOWNING STREET, February 10, 1906.

MY LORD,—I have the honour to acknowledge the receipt of your despatch No. 28 of the 16th ultimo, stating that the attention of the British Columbia Government has been drawn to the objections raised by the Institute of Chartered Accountants in this country to the Act recently passed incorporating an Institute of Chartered Accountants in that province.

2. I hope that the Government of British Columbia will see their way to amend section 6 of the Act, which empowers fellows and members of the institute to assume the titles and use the initials, conferred on fellows and associates of the English Institute by Royal charter. I may add that the Government of Newfoundland has agreed to obtain the excision of similar provisions from a recent Act of the legislature of that colony.

I have, &c.,

ELGIN.

(Approved 1 March, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, February 21, 1906.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a despatch, dated 12th instant, from the Lieutenant Governor of British Columbia, transmitting copy of a letter from the Provincial Secretary which the Lieutenant Governor states expresses the views of his Government regarding the recent correspondence with respect to an Act to incorporate the Institute of Chartered Accountants of British Columbia.

In this letter the Provincial Secretary refers to the report of the undersigned to Your Excellency in Council, approved on November 13, 1905, in which it is said that the undersigned expresses the opinion that the said Act, and certain other Acts, might be left to such operation as they may have, and the Provincial Secretary states that in view of this Minute of Council it does not appear to be necessary to make any representation to the Secretary of State about the matter in question.

The undersigned observes that Mr. Lyttelton's despatch is dated subsequently to the report to which the Provincial Secretary refers, and therefore was not the subject of consideration in connection with the said report.

Pursuant to the order of Your Excellency in Council of January 10 last the Lieutenant Governor was advised of the nature of the complaint made by the Institute of Chartered Accountants, and Mr. Lyttelton's observations thereon. He was asked what steps, if any, his Government proposed to take in respect to the complaint.

The Provincial Secretary's letter contains no answer to this inquiry, and it seems to be quite an irrelevant circumstance that the undersigned had expressed the opinion previously to any objection being raised that the Act might be left to such operation as it may have.

The undersigned, recommends, therefore, that the Lieutenant Governor be asked to consider the complaint, and state what action, if any, he is advised to take with regard to it, with the reason, in case his Government does not see its way to introduce amending legislation.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Transmitted to the Secretary of State by the Lieutenant Governor April 17, 1906.

PROVINCIAL SECRETARY'S OFFICE, VICTORIA, APRIL 4, 1906.

His Honour the Lieutenant Governor.

SIR,—I have the honour to acknowledge the receipt of a despatch dated March 17 last, from the Under Secretary of State covering a copy of a Minute of the Privy Council approved by His Excellency the Governor General on the 1st idem, embodying a report from the Minister of Justice upon a letter from this office, which was forwarded to the Secretary of State, in reference to the exception taken by the Institute of Chartered Accountants to the incorporation of an association under the name of the Institute of Accountants of British Columbia.

The Minister of Justice observed that the said communication contains no answer to the inquiry what steps, if any, this government proposed to take in respect of the complaint made by the Home Institute, and the Minister recommends that this Government be asked to consider the complaint.

I beg to remark that this matter had been considered prior to the despatch of my letter of February 9, and the decision was not in favour of introducing amending legislation as this Government is unable to understand why the privilege accorded to other provinces of incorporating institutes of chartered accountants should be denied in the case of British Columbia. Mr. Colville, the secretary of the institute, remarks on the adoption by the Canadian Institute of the letters F.C.A. and A.C.A., the same objections might be urged to the use of the letters B.A., but I am unaware that any single institution can claim them, the term being used by all degree conferring institutions, and, therefore there seems no reason why the Institute of Chartered Accountants of Great Britain should have the exclusive right to the letters aforesaid.

I am

Your honour's obedient servant,

FRED'K. J. FULTON,
Provincial Secretary.

(Approved 17 July, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, April 18, 1906.

To His Excellency the Governor General in Council:

The undersigned, referring to Lord Elgin's despatch of February 10 last, in which His Lordship states that he hopes that the Government of British Columbia will see their way to amend section 6 of the Act to incorporate the Institute of Chartered Accountants of British Columbia which empowers fellows and members of the institute to assume the titles and use the initials conferred on fellows and associates of the English institute by royal charter, has the honour to state that communications having been had with the local government the Lieutenant Governor transmits a letter from

the Provincial Secretary expressing the views of his ministers wherein the Provincial Secretary states that the matter has been considered and that the Government is not in favour of introducing amending legislation, as they cannot understand why the privilege accorded to other provinces of incorporating institutes of chartered accountants should be denied in the case of British Columbia. He adds that Mr. Colville, the secretary of the institute, remarks on the adoption by the Canadian Institute of the letters 'F.C.A.' and 'A.C.A.' and he says that the same objection might be urged to the use of the letters 'B.A.' but that he is unaware that any single institution can claim them, the term being used by all degree conferring institutions, and, therefore, there seems no reason why the Institute of Chartered Accountants of Great Britain should have the exclusive right to the letters aforesaid.

It appears, therefore, that the Provincial Government is unwilling to promote any amendment. This being so, probably the object which Mr. Colville had in view might be achieved by Imperial legislation prohibiting the use of these designations in the United Kingdom, except as authorized under Imperial legislation.

The undersigned recommends, therefore, that the Right Honourable the Principal Secretary of State for the Colonies be advised in the sense of this report.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

6 EDWARD VII, 1906

(Approved 13 March, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd November, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the Sixth year of His Majesty's reign, 1906, and received by the Secretary of State for Canada on 29th March last, and he is of opinion that these may be left to such operation as they may have, subject to the following comments:—

Chapter 32, intituled "An Act to Consolidate and Amend the 'Municipal Clauses Act and Amending Acts.'"

Among the by-law making powers of municipalities under this Act is defined by section 50, the undersigned observes that those enumerated 90, 91 and 105, relate to the criminal law, and may be *ultra vires*. The undersigned does not admit that enumeration 98 is within the authority of the legislature, and enumerations 187 and 188 would seem to be *ultra vires* in view of the recent amendments to the Criminal Code, 1892, with regard to trading stamps. Paragraph 30 of section 175 is also subject to the last mentioned objection. The undersigned does not, however, for these reasons consider that this Act should be disallowed. It will be for the courts if objection be raised as to any of these provisions to determine the question.

Chapter 51, intituled "An Act to incorporate the British Columbia Central Railway Company."

Chapter 52, intituled "An Act to incorporate the British Columbia Northern and Alaska Railway Company."

Chapter 63, intituled "An Act to incorporate the South-East Kootenay Railway Company."

Chapter 66, intituled "An Act to incorporate the Southern Okanagan Railway Company."

Each of these Acts authorizes the incorporated company to construct a railway from or to the boundary of the province, and is, on that account, the undersigned submits, objectionable. The question of the capacity of a local legislature to confer such powers may, however, be determined by the courts when it arises.

Chapter 55, intituled "An Act to incorporate The Canadian Plate Glass Insurance Company."

Chapter 62, intituled "An Act to incorporate the Royal Plate Glass Insurance Company of Canada."

In the sections of these Acts defining the powers of the respective companies authority is conferred to make and effect contracts of insurance with any person or corporation against loss or damage by breakage of plate glass and other glass by accident or otherwise, and generally to carry on the business of plate glass and other glass insurance without any limitation as to the location of the property insured or having regard to the territorial limits of the province.

The undersigned considers that these sections should be amended so as to expressly confine the business of the companies to the Province of British Columbia, and he recommends that the Provincial Government be requested to reconsider these provisions with a view to obtaining the suggested amendment from the legislature.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

ATTORNEY-GENERAL'S OFFICE, VICTORIA, 3rd April, 1907.

The Honourable A. B. AYLESWORTH, K.C.,
Minister of Justice,
Ottawa.

SIR,—It appears that in your report to Council of the 23rd of November last, you recommend that the government of this province be requested to reconsider the provisions of Chapters 55 and 62 of the Statutes of 1906, whereby two plate glass companies were incorporated and were empowered to carry on the business of insuring plate glass. You consider that the Acts should contain some provision limiting the operations of the company to the Province of British Columbia.

It seems to me that as there are no provisions in these Acts expressly or by necessary implication authorizing these companies to carry on their business in any place or in any manner beyond the powers of the Legislature of this province to authorize, that it is going altogether too far for you to object to this legislation on the ground that the companies may possibly do something that they have not been empowered to do. Should they exceed their powers, they can be kept within bounds by the courts.

If the Legislature of this province incorporates a company to carry on the business of insurance, I think that undoubtedly means to carry on the business of insurance in this province, but by the Comity of States or Nations, I also think that such a company might carry on business in the state of Washington. As a matter of fact, all the American insurance companies doing business in this province have received their charters from state legislatures. I have no doubt that many companies incorporated by the Parliament of Canada are doing business in foreign countries. In this connection I would draw your attention to the provisions of Chapter 125 of the Dominion Statutes of 1906. That is an Act regarding the Mexican Tramways Company, and it enacts that subject to the laws in force in the Republic of Mexico, and with such legislative, governmental, municipal or other authority as is necessary, the said company may, within the Republic of Mexico, construct railways, &c.

What can be done by the Comity of States or Nations can also I think be done by the Comity of Provinces.

A company incorporated by Ontario can obtain under our laws a license authorizing it to carry on business in this province. I am not aware that it has yet been decided that a company incorporated in one province cannot do business in another province, provided the other province consents.

In any event, I would again submit that legislation which does not expressly or by necessary implication exceed the powers of a provincial legislature to enact, should not be interfered with on the ground that the powers conferred may be exceeded.

I have the honour to be, sir,

Your obedient servant,

FRED. J. FULTON,
Attorney General.

DEPARTMENT OF JUSTICE, OTTAWA, 19th April, 1907.

The Honourable FRED. J. FULTON,
Attorney General,
Victoria, B.C.

SIR,—Referring to your letter of 3rd instant, with regard to Chapters 55 and 62 of the British Columbia Statutes, 1906, incorporating two Plate Glass Insurance Companies, I observe that the time for disallowance of these statutes expired on 29th ultimo, so that there is now no opportunity for His Excellency exercising his power of disallowance even if he were so advised.

My intention, however, was rather to direct the attention of your government to what seemed to be a very desirable limitation in the public interest to be inserted in the statutes of these companies. Any question which may arise as to their powers to transact business outside the province, in case they should undertake to do so, may, no doubt, as you truly state, be determined by the courts, but where the business in which a company is engaged is declared *ultra vires*, considerable confusion and hardship are likely to result, so that it is I think especially desirable that corporations should from the outset confine their business to its legitimate sphere.

I am quite disposed to agree with everything you state except as to the possibility of the application of the doctrine of the Comity of Nations to the case of a provincial corporation. These provincial companies are incorporated and their powers conferred by the local legislatures in the execution of the powers of section 92 of the British North America Act, which relates entirely to matters private and local within the province as distinguished from those which affect the Dominion at large or two or more of the provinces. A corporation can exercise no rights or powers anywhere except those derived from its statute or the laws of the jurisdiction in which it is created; and so it is laid down that a corporation formed to carry on business in one country only exceeds its powers if it carries on business out of that country. Consequently provincial corporations being limited by the British North America Act to provincial objects have no quality which can be recognized by the Comity of Nations, so far as concerns the carrying on of business or the making of contracts in any provinces other than the incorporating province.

You refer to Dominion corporations, but these being created in pursuance of general powers of legislation, unlimited, except as to the subjects enumerated in section 92, stand in quite a different case, and may no doubt, if in accordance with the intention of the incorporating Act carry on business in any foreign country in which the rule of comity as understood in England prevails.

It is because these considerations seem so obvious, and the propriety so apparent of stating plainly in the incorporating statute the limitation which it necessarily carries, that I made the recommendation which is the occasion for your letter.

I have the honour to be, sir,

Your obedient servant,

A. B. AYLESWORTH,
Minister of Justice.

7 EDWARD VII, 1907

(Approved 5 May, 1908)

DEPARTMENT OF JUSTICE, OTTAWA, 27th November, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of British Columbia, passed in the seventh year of His Majesty's reign, 1907, and received by the Secretary of State for Canada on 6th May last, and he is of the opinion that these may be left to such operation as they may have.

The undersigned would observe as to Chapter 20, intituled "An Act to amend the 'Bush Fire Act'" that by section 2 it is provided that all locomotive engines used on any railway which passes through any fire district shall be provided with certain apparatus to prevent the escape of fire. This provision, no doubt, has its application to railways within the legislative jurisdiction of the province, but plainly, it cannot apply to or affect railways within the exclusive authority of the Parliament of Canada.

Chapter 21A, intituled "An Act to regulate Immigration into British Columbia."

Although included in the volume of Acts passed at the session of 1907 this Bill apparently has not received the Lieutenant-Governor's assent. It is marked "Assent reserved." This is, therefore, a reserved Bill. This Bill, however, could not, having regard to its language, have any effect even if it were assented to, inasmuch as its leading provision merely declares the immigration into British Columbia of certain classes of people to be lawful, but the immigration of these people is lawful quite independently of the provisions of the Bill. For this and other obvious reasons, the undersigned is not prepared to recommend that this Bill should receive Your Excellency's assent.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

8 EDWARD VII, 1908

(Approved 17 November, 1908).

DEPARTMENT OF JUSTICE, OTTAWA, 21st September, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of British Columbia, passed in the eighth year of His Majesty's reign, 1908; received by the Secretary of State for Canada on 18th February and 20th March last, and he has the honour to report thereon as follows:—

Chapter 23, intituled "An Act to regulate immigration into British Columbia;" is reserved for further report.

Chapter 61, intituled "An Act to incorporate the Hudson Bay Pacific Railway Company."

By this Act the Company is incorporated to lay out, construct and operate a line of railway from the western to the eastern boundary of the province. It is questionable whether it is competent to the Provincial Legislature to authorize such a work, since the legislative authority of a province does not extend to works connecting two provinces or extending beyond the limits of the province.

The undersigned does not, however, on that account recommend disallowance.

The undersigned is of the opinion that these statutes other than the said Chapter 23 may be left to such operation as they may have, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(Approved 15 February, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, 19th November, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a statute of the Legislature of British Columbia, passed in the eighth year of His Majesty's reign (1908), and received by the Secretary of State for Canada on 18th February last, being chapter 23, intituled "An Act to regulate Immigration into British Columbia," and he has the honour to report as follows:—

This Act is in terms substantially a re-enactment of a similar statute bearing the same title which has been several times enacted by the local legislature and as often disallowed by the Governor General in Council. See the report of the Hon. Mr. Mills, Minister of Justice, of 5th January, 1901; his report of 4th September, 1901, approved by His Excellency on 11th September, 1901; the report of the Hon. Mr. Fitzpatrick of 14th November, 1902, approved by His Excellency on 5th December, 1902; his report of 1st October, 1903, approved by His Excellency on 26th March, 1904; his report of 16th November, 1904, approved by Your Excellency on 20th January, 1905; his report of 19th April, 1905, approved by Your Excellency on 28th April, 1905, and his report of 18th September, 1905, approved by Your Excellency on 30th September, 1905.

By Dominion statute, the Japanese Act, 1907 (6-7 E. VII, c. 50) the convention of 31st January, 1906, between the United Kingdom and Japan is declared to be sanctioned. By Article 1 of this Convention the High Contracting Parties agree

that the stipulations of the treaty of commerce and navigation between Great Britain and Japan of 16th July, 1894, and of the Supplementary Convention of 16th July, 1905, shall be applied to the intercourse, commerce and navigation between the Empire of Japan and the British Dominion of Canada. By Article 1 of the said treaty of commerce and navigation of 16th July, 1894, it is provided that the subjects of each of the two High Contracting Parties shall have full liberty to enter, travel or reside in any part of the dominions and possessions of the other Contracting Party, and shall enjoy full and perfect protection for their person and property.

The British Columbia Immigration Act, 1908, is therefore subject not only to all the objections on account of which the preceding statutes of similar import were disallowed but in so far as it affects Japanese subjects coming into British Columbia it is also repugnant to the provisions of the said Dominion statute, the effect of which is, as has been stated, to confer upon Japanese subjects full liberty to enter, travel or reside in any part of the Dominion.

The undersigned, therefore, for the reasons mentioned by his predecessors in office, and for the additional reason mentioned in this report, recommends that the said statute of British Columbia be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

(The Statute was accordingly disallowed on the fifteenth day of February, 1909.)

9 EDWARD VII, 1909

(Approved 10 October, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, October 18, 1909.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the ninth year of His Majesty's reign (1909) and received by the Secretary of State for Canada on the 29th day of March, 1909; and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned desires, however, to call special attention to the following of these chapters:

Chapter 49, intituled "An Act to incorporate The British Columbia Permanent Loan Company."

This Company is empowered to lend money on the security of mortgages on real estate, debentures, bonds, stocks and other securities of any Government, municipal or school corporation, chartered bank, etc., also to acquire, hold and dispose of real estate, to act as agents of others who entrust it with money, etc.

It is perhaps questionable whether some of the powers conferred do not affect the subject of banking.

The 7th section is as follows:—

"So far as the province of British Columbia has jurisdiction to confer the power, the Company may establish agencies in any or all of the Provinces or Territories of the Dominion of Canada, or in any foreign country or place, and transact its business therein, the directors having obtained the necessary license legalizing the extension and transaction of such business therein."

The undersigned is of the opinion that a local Legislature has no authority to authorize a Company to establish agencies or to transact business beyond the limits of the Province, and the Legislature itself seems to have considered its power in this regard questionable since it has introduced the enactment quoted by the words, "So far as the Province of British Columbia has jurisdiction to confer the power." Perhaps in view of this limitation the grant (such as it is) may not be misleading; and, therefore, considering also that it is proposed to have the questions which have arisen touching the local powers of incorporation referred to the Supreme Court of Canada to be determined, the undersigned does not recommend disallowance.

Chapter 52, intituled, "An Act to incorporate the Flathead Valley Railway Company."

Chapter 56, intituled, "An Act to Incorporate the Meadow Creek Railway Company."

These two last mentioned Statutes profess to confer powers to construct railways extending to the international boundary, and are, therefore, subject to an objection which has been frequently stated with regard to similar enactments by the Local Legislature.

The undersigned does not, however, recommend the disallowance of these Acts.

The undersigned recommends that a copy of this Report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

10 EDWARD VII, 1910

(Approved 3 March, 1911)

DEPARTMENT OF JUSTICE, OTTAWA, January 28, 1911.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Province of British Columbia, passed in the tenth year of His late Majesty's reign, 1910, and received by the Secretary of State for Canada on 21st March, 1910, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned observes that as to Chapter 7, intituled "An Act to revise and consolidate the 'Companies Act, 1897' and Amending Acts," a memorandum has been received on behalf of the Canadian Manufacturers Association urging disallowance because of the alleged incapacity of the legislature to require a company incorporated by the Dominion to comply with the requirements of this Act as a condition to the execution of its corporate powers within the Province.

The undersigned does not doubt that this is a debatable question and that strong reasons may be urged in support of the objection. The provinces, however, earnestly maintain their jurisdiction in this respect, and the undersigned considers, especially in view of the fact that similar legislation in other provinces has been left to its operation, that it would be expedient to leave the question to the determination of the courts. Moreover there is a reference now pending to the Supreme Court of Canada under the authority of your Excellency's Government wherein questions are propounded which should lead to the expression of a judicial view upon the subject.

The undersigned is, therefore, not prepared in the present circumstances to recommend that the power of disallowance should be exercised.

Chapter 61, intituled "An Act to incorporate the British Empire Insurance Company."

Chapter 82, intituled "An Act to incorporate The Western Union Fire Insurance Company."

Each of these statutes, incorporating a fire insurance company, contains a section which reads as follows:—

"In so far as authorization by the Legislature of the province of British Columbia is necessary, the Company may procure itself to be registered or licensed in any or all of the Provinces or Territories of the Dominion of Canada, or in any foreign country or place, and transact its business therein, the directors having obtained the necessary certificate of registration or license legalizing the extension of and transaction of such business therein."

The undersigned for reasons which have been stated in previous reports of the undersigned and his predecessors does not admit the authority of a local legislature to confer capacity upon a local company to transact business outside of the incorporating province. The provision in question is however expressed to be merely in so far as authorization by the legislature of British Columbia is necessary; and, while it may involve the assertion of authority to confer extra-provincial powers, an attempt to execute any such powers would be subject to be restrained or determined by the courts. The authority of the legislatures with regard to the incorporation of companies is also the subject of question submitted to the Supreme Court of Canada in the aforesaid reference. The undersigned does not consider, therefore, that the provision in question should lead to the disallowance of these Acts.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the Province of British Columbia, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

1 GEORGE V, 1911

(Approved 15 February, 1912)

DEPARTMENT OF JUSTICE, OTTAWA, February 7, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the first year of His Majesty's reign (1911), and received by the Secretary of State for Canada on 17th March last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter, 26, intituled "An Act relating to Fire Insurance."

The main provision of this Act is section 4, by which in effect no company shall undertake any contract of fire insurance unless licensed under the said Act. The license is not merely a matter of taxation, although by section 50 fees are prescribed to be taken, because by section 14 the company is required, as a condition to the license, to deposit securities for the protection of policyholders. By section 34 the Lieutenant-Governor is to appoint a superintendent of insurance, and the superintendent is to examine and report upon the business of licensed companies. By section 3 (b), it is provided that the Act, shall not apply to "a company licensed by the Dominion of

Canada, except as to such sections thereof as are within the jurisdiction of the Legislative Assembly of the Province of British Columbia to enact"; and by section 7 "Insurance licensees of the Dominion of Canada shall, upon due application and upon proof of such Dominion license subsisting, and upon otherwise conforming to the provisions of this Act applicable to Dominion licensees, be entitled to a license under this Act."

These provisions seem to place insurers licensed under the Insurance Act of the Dominion in a somewhat embarrassing position. They are not excepted from the operation of the local Act; on the contrary the sections of the local Act which are within the jurisdiction of the assembly to enact are intended to apply to companies licensed by the Dominion, while of course provisions not within the jurisdiction of the assembly would be ineffective as to any insurer, whether licensed by the Dominion or not. As to the authority of the legislature, it is, in the view of the undersigned, questionable whether the statute can constitutionally operate with respect to companies incorporated by the Dominion parliament and empowered to do business throughout the Dominion, or with respect to companies licensed under the authority of the Insurance Act of Canada. It is, however, open to these companies to raise any such questions for the determination of the courts, and it is not, therefore, necessary to consider them further upon the present occasion.

The undersigned observes moreover with respect to this Act that the taxation of premiums authorized by section 42 may be indirect taxation.

Chapter 33, intituled "An Act to consolidate and amend the 'Coal-Mines Regulation Act', and Amending Acts."

There are some provisions in this Act with respect to Chinamen, see sections 2 and 5, and Rule 42, which may be *ultra vires* as relating to naturalization and aliens, but the question may be conveniently determined by the courts if it arise.

Chapter 53, intituled, "An Act authorizing the Lieutenant-Governor in Council to grant certain Land as a Site for the University of British Columbia."

This Act professes to authorize the Lieutenant-Governor to grant to the University of British Columbia a parcel of land within the boundaries of the Municipality of Point Grey for university purposes.

The undersigned observes that a claim has been asserted by the Dominion to certain lands at Point Grey as constituting a military reserve. He is not advised as to whether the lands proposed to be granted to the university form part of the said reserve, but he wishes it to be understood that in leaving this Act to its operation the Government of Your Royal Highness does not admit the title of British Columbia, or in any respect waive or prejudice the claim or right of the Dominion to the administration of Point Grey.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

2 GEORGE V, 1912

(Approved 8 October, 1912)

DEPARTMENT OF JUSTICE, OTTAWA, September 25, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the second year of His Majesty's reign (1912); and

received by the Secretary of State for Canada on the 3rd March last; and he is of opinion that these Statutes may be left to such operation as they may have.

With regard to Chapter 17, intituled "An Act respecting Forests and Crown Timber Lands, and the Conservation and Preservation of Standing Timber, and the Regulation of Commerce in Timber and Products of the Forest."

The undersigned observes that in so far as this Statute partakes of the qualities which justify its title of "the regulation of Commerce in timber and products of the forest" it is *ultra vires* of the Legislature, because the regulation of Trade and Commerce is a subject wholly withdrawn from the Local Legislatures.

The undersigned is not satisfied, however, that the title in this respect aptly describes the character of the Act, many of the provisions of which are certainly competent to the Legislature. It contains some provisions with regard to timber scaling and measurement and others which are perhaps questionable but the undersigned considers that it is an Act of the class which may properly be allowed to remain in operation subject to the determination by the Court of any questions which may arise as to special or exceptional provisions.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia for the information of his Government.

Humbly submitted,

CHAS J. DOHERTY,
Minister of Justice.

3 GEORGE V, 1913

(Approved 10 November, 1913)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd October, 1913.

To His Excellency the Administrator of the Government in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the third year of His Majesty's reign, 1913, and received by the Secretary of State for Canada on 18th March last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following remarks:—

Chapter 10, intituled "An Act to amend the 'Companies Act.'"

It is provided by section 16 that the registrar may refuse to issue a license to an extra-provincial company which is authorized by its charter to exercise all or any of the powers of a trust company as defined by the Trust Companies Regulation Act subject to appeal to the Lieutenant-Governor in Council; and it is in like manner provided by section 18 that the registrar may, subject to like appeal, refuse to issue a certificate of registration to an extra-provincial company.

These are questionable provisions in so far as they are intended to affect the powers of a trust company incorporated by the Dominion Parliament with authority to carry on business in British Columbia.

The undersigned does not, however, consider it necessary to make any further recommendation with regard to this statute in view of the fact that cases are now pending in the courts involving the principle of objection to these provisions.

Chapter 83, intituled "An Act respecting Offensive Weapons."

The object of this statute is to impose penalties upon persons who sell or offer to sell weapons of the description mentioned in the Act, and it is, in the opinion of the undersigned, doubtful whether these provisions do not relate to the criminal law

rather than to the subjects committed to provincial jurisdiction, but this question may be conveniently determined by the courts if raised in any prosecution.

Chapter 86, intituled "An Act in relation to the Colonial Trust Company, Limited."

The powers conferred upon this company are very broad, including power to carry on business as financiers, and to execute all kinds of financial and commercial operations; to advance, deposit or lend money upon such terms as may seem expedient; to discount, buy, sell, and deal in bills, notes, warrants, coupons, and other negotiable or transferable securities or documents, including bills of exchange and bills of lading; to invest and deal with the moneys of the company not immediately required as may be deemed expedient; to lend money to such persons and upon such terms as may seem expedient; to borrow or raise or secure the payment of money in such manner as the company shall think fit; to receive money, securities and valuables of all kinds on deposit at interest, and to lend, deposit and advance money on securities and property to such persons and on such terms as may seem expedient.

It seems to the undersigned that the powers so described are directly concerned with the subject of banking, and, for that reason, inappropriate to a provincial grant. Indeed, it is difficult to perceive, assuming the competency of the legislature, that any further authority would be required to enable the company to establish and carry on the business of a bank of deposit, loan and exchange.

The undersigned recommends therefore that enquiry be made of the Lieutenant-Governor as to whether in the view of his Government the powers of this company ought not to be limited so as to exclude banking transactions. The subject of banking is of course committed exclusively to Parliament, and as this is a very important subject of Dominion jurisdiction, it is manifestly undesirable that legislation should leave room for any question as to the authority by which powers of such consequence and interest to the community should be exercised.

Chapter 89, intituled "An Act respecting the Dominion Trust Company."

This Act professes to confer borrowing or other powers upon a company incorporated by the Parliament of Canada. It moreover provides that the company may receive money on deposit and allow interest on the same.

It is, in the view of the undersigned, open to very grave question whether the powers of a Dominion corporation can be enlarged by a local legislature. The authority to receive money on deposit and allow interest on the same is moreover questionable for the reasons hereinbefore indicated in the case of the Colonial Trust Company. The undersigned therefore commends this Act to the further consideration of the local Government.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government.

Humbly submitted,

CHAS J. DOHERTY,
Minister of Justice.

4 GEORGE V, 1914

(Approved 10 October, 1914)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 1st October, 1914.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of British Columbia, passed in the fourth year of His Majesty's reign (1914), and

received by the Secretary of State of Canada on 17th March last, and he is of opinion that these Statutes may be left to such operation as they may have.

Chapter 12, intituled "An Act to amend the 'Companies Act'".

Chapter 13, intituled "An Act relating to Trust Companies"

contain provisions which in the opinion of the undersigned are *ultra vires* of the Legislature, but in view of the fact that litigation involving questions upon which the validity of these enactments will depend is now before the Courts, the undersigned considers it inadvisable to recommend disallowance or submit any further comment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of British Columbia, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

THE 19TH OF MARCH, 1915,

AT GOVERNMENT HOUSE, VICTORIA, B.C.

SIR,—I have the honour to inform you that I have thought it advisable to reserve for the pleasure of His Royal Highness the Governor General in Council, Bill No. 19, "An Act to amend the Pool-rooms Act."

My reasons for doing so are that the provisions of this Bill appear to affect the standing of aliens in this Province, and should I be correct in my conclusions, legislation of this character, should it become law, might seriously interfere with our International relations and Federal interests.

I have the honour to be, Sir,

Your obedient servant,

F. S. BARNARD,

Lieutenant-Governor.

The Honourable,
The Secretary of State,
Ottawa.

5 GEORGE V, 1915

(Approved, 17 March, 1916)

January 25th, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the fifth year of His Majesty's reign, 1915, and received by the Secretary of State for Canada on 23rd March, 1915, and he is of opinion that these statutes may be left to such operation as they may have. The undersigned observes, however, that there are some *ultra vires* provisions contained in Chapter 13 entitled An Act to amend "The Trust Companies Act," notably Sec. 5 which assumes a power in the legislature to impose conditions upon the powers exercised by a Dominion Company in the province of its incorporated powers. The undersigned considers however that the Courts may conveniently declare the invalidity of any of these statutory provisions which are in excess of local powers.

There has been referred to the undersigned also, a copy of a report of the Lieutenant-Governor of British Columbia, in which he states that he has thought it advisable to reserve for the pleasure of Your Royal Highness Bill No. 19 of the Legislation of 1915, entitled An Act to amend "The Pool-rooms Act," and the Lieutenant-Governor states the reasons for his doing so which would appear to affect the standing of aliens in the province and that such legislation may interfere with our national relations and federal interests. The Bill provides in effect that no pool room license shall be granted save to a person who is entitled to apply for and obtain a license under the "Liquor License Act"; that no pool room license shall be issued to any person who has, within the space of three years preceding his application for such license, been convicted of any criminal offence, or been the holder of any license which has been cancelled, or has been an applicant for a license and has had such application denied upon either of the two preceding grounds. The Bill provides moreover that the Superintendent of Provincial Police may refuse any application for licenses and may cancel any licenses granted by him. Whatever the effect these provisions may have as to aliens or international relations, the undersigned is not prepared to recommend that they should go into operation by the sanction of Your Royal Highness in Council, and the undersigned therefore recommends that Your Royal Highness' assent be withheld.

The undersigned recommends that a copy of this report be referred to the Lieutenant-Governor of the province for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

VICTORIA, 6th January, 1917.

HON. P. E. BLONDIN,
Secretary of State,
Ottawa, Ont.

SIR,—We are forwarding to you by concurrent post several printed copies of proposed Imperial Legislation to overcome certain constitutional difficulties which have arisen in this Province.

Some doubt is entertained as to whether or not the last Provincial Legislature ceased to exist on March 14 last. On that date a bill was introduced by the late government extending the life of Parliament to the first of June, but it did not receive the Royal assent until the 15th March. Hence, it follows that if the Legislature expired on the 14th March all subsequent legislation is invalid.

A further question arises in respect to the competency of this Parliament to pass an Act entitled "the Military Forces Voting Act," making provision to record the votes of soldiers serving abroad in the recent general election and providing all the necessary machinery for this purpose. If the principle enunciated in the case of *Deacon v. Chadwick*, 1 Ontario Law Reports, page 346, to the effect that no province can pass laws to operate outside its own territory, is sound in law, a serious question arises as to the validity of this legislation. If this view is sound this particular Act would be inoperative even if passed prior to the 14th of March. As a matter of fact it was passed subsequent to this date. It is desirable, of course, that effect should be given to this legislation as it has already been acted upon, and the enclosed proposed Bill would, in our view, remove any doubts that exist at present.

A further question arises in respect to the power of the Province, acting as lessees from His Majesty, to hold and deal with the lands and premises known as the "British Columbia House" in the City of London, where the offices of the Agent General for British Columbia are located. The Province is committed to a large

expenditure in connection with these premises and it is desirable that all doubt should be removed in reference to the power of the Province to acquire and hold this property.

It is not necessary, I take it, to go into the authorities with you which in our view raise the constitutional difficulties referred to.

We would be obliged if you would transmit this request, together with the copies of the proposed Bill referred to, to the Under-Secretary of State for the Colonies in London, England, for its enactment by the Imperial Parliament; and also consent that instructions be given by this Government to Sir Richard McBride, Agent General in London, to join in expediting the passage of this legislation.

I have the honour to be, Sir,

Your obedient servant,

M. A. MACDONALD,,

Attorney General.

1st May, 1917. .

DEPARTMENT OF JUSTICE, OTTAWA, 1st May, 1917.

To His Excellency the Governor General in Council:

The attention of the undersigned having been directed to the following subject by cable inquiry of 23rd ultimo from the High Commissioner's Office in London, has the honour to report that he has ascertained that the Attorney General of British Columbia wrote the Secretary of State on 6th January last as follows:—

“We are forwarding to you by concurrent post several printed copies of proposed Imperial legislation to overcome certain constitutional difficulties which have arisen in this Province.

“Some doubt is entertained as to whether or not the last Provincial Legislature ceased to exist on March 14th last. On that date a bill was introduced by the late government extending the life of Parliament to the first of June, but it did not receive the Royal Assent until the 15th March. Hence, it follows that if the legislature expired on the 14th March all subsequent legislation is invalid.

“A further question arises in respect to the competency of this Parliament to pass an Act entitled ‘the Military Forces Voting Act’, making provision to record the votes of soldiers serving abroad in the recent general election, and providing all the necessary machinery for this purpose. If the principle enunciated in the case of *Deacon v. Chadwick*, 1 Ontario Law Reports, page 346, to the effect that no province can pass laws to operate outside its own territory, is sound in law, a serious question arises as to the validity of this legislation. If this view is sound this particular Act would be inoperative even if passed prior to the 14th of March. As a matter of fact it was passed subsequent to this date. It is desirable, of course, that effect should be given to this legislation as it has already been acted upon, and the enclosed proposed Bill would, in our view, remove any doubts that exist at present.

“A further question arises in respect to the power of the Province, acting as lessees from His Majesty, to hold and deal with the lands and premises known as the ‘British Columbia House’ in the City of London, where the offices of the Agent General for British Columbia are located. The Province is committed to a large expenditure in connection with these premises and it is desirable that all doubt should be removed in reference to the power of the Province to acquire and hold this property.

"It is not necessary, I take it, to go into the authorities with you which in our view raise the constitutional difficulties referred to.

"We would be obliged if you would transmit this request, together with the copies of the proposed Bill referred to, to the Under-Secretary of State for the Colonies in London, England, for its enactment by the Imperial Parliament; and also consent that instructions be given by this Government to Sir Richard McBride, Agent General in London, to join in expediting the passage of this legislation".

The draft Bill referred to in the first paragraph of the Attorney General's letter is in the following terms:—

"Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

"1. The session of the Legislature of the Province of British Columbia held in the sixth year of the reign of His Majesty, being the Fourth Session of the Thirteenth Parliament of the said Province, was validly begun and holden at the City of Victoria, in the said Province, on the second day of March, A.D. 1916, and validly and lawfully existed and continued up to and including the thirty-first day of May, A.D. 1916.

"2. All votes and proceedings, Acts, Statutes and laws had and taken, made and passed at the said session are hereby ratified, confirmed and validated, and are hereby declared and enacted to have been had and taken, made and passed lawfully and validly and effectually according to the tenor thereof for all purposes whatsoever, and to have had and to have the force of law: Provided that nothing herein contained shall be deemed to give effect to any Act, Statute or law which has been disallowed by the Governor General of Canada in Council, or has expired, or has been lawfully repealed, or to prevent the lawful disallowance or repeal of any law.

"3. The members of the Legislative Assembly of the Province of British Columbia constituting the Fourteenth Parliament of the said Province were duly, validly, lawfully and effectually elected pursuant to the tenor and effect of the declaration of the result of their election made by the Deputy Provincial Secretary of the said Province on the twenty-third day of November, A.D. 1916; subject always to the effect of any recount of votes lawfully had or election petition lawfully brought as changing the result of such declaration in respect of any member.

"4. The Government of the Province of British Columbia in right of the said Province was and is lawfully empowered as lessee from His Majesty to take, hold, and deal with the lands and premises known as British Columbia House, in the City of London, England; subject always to the terms and conditions of the lease thereof as granted by His Majesty.

"5. This Act may be cited as the 'British Columbia Act, 1917'".

It appears that Your Excellency on 22nd January last transmitted to the Secretary of State for the Colonies copy of the Attorney General's letter and the draft Bill set out stating that these were forwarded "with a view to an enactment of the bill by the Parliament of the United Kingdom," and Your Excellency at the same time invited attention to the request that consent should be given that the British Columbia Government should instruct Sir Richard McBride, Agent in London, to join in expediting the passage of the legislation.

It moreover appears that the Secretary of State for the Colonies on 27th February last cabled with reference to the last mentioned despatch that before considering introduction of legislation desired by the Government of British Columbia he would be glad to have a report from Your Excellency's Ministers showing exactly the grounds

upon which it was considered by Your Excellency's Government that legislation is necessary.

The undersigned has, since the matter was called to his attention, given it very careful consideration, but he is unable to state any grounds upon which in his opinion it is necessary or advisable that effect should be given to the proposed bill by the Parliament of the United Kingdom. If, as the Attorney General of British Columbia suggests, it be doubtful whether the term of the legislature of British Columbia which was recently dissolved expired on 14th March, 1916, or at a later date, and if by reason of that doubt the validity of the statutes enacted by that legislature after 14th March, 1916, be questionable, the undersigned apprehends that these questions may be quieted by local authority, and that the doubtful legislation may be thereby confirmed in so far as it is within the classes of subjects assigned to the provincial legislatures.

It is represented that questions have arisen as to the power of the legislature to enact the Military Forces Voting Act, and as to the capacity of the Province to become a lessee of the offices in London where the provincial business is transacted, but the undersigned conceives that amendment of the British North America Acts in order to remove such doubts is not unlikely to give rise to other doubts and implications and to produce inconveniences of a more serious and far-reaching character than those incident to the situation in hand. It has been affirmed by the highest judicial authority that under the organic instrument of Canada the powers distributed between the Dominion on the one hand and the provinces on the other cover the whole area of self-government within the limits of Canada, and that it would be subversive to the entire scheme and policy of the Act to assume that any point of internal self-government is withheld from Canada. Moreover the final tribunal has also recently recognized and confirmed the exercise of provincial status and capacity beyond the territorial limits of the provinces; and therefore in the humble opinion of the undersigned the British North America Acts as ultimately interpreted are not deficient in any particular requisite, either for the recognition of a measure of extra-territorial capacity in the provinces as thereunder constituted, or to enable the provinces to regulate matters appurtenant to their self-government.

The British North America Act, 1867, under which the four original provinces were united, and the Terms of Union subsequently arranged with the other provinces, which joined the Union, are founded upon deliberation and agreement, and they are the constitutional instruments upon which the provinces in common and the Dominion depend. Necessarily questions must from time to time arise as to the validity of legislative Acts under a system in which legislative authority is distributed, but these doubts fall to be resolved by the judicial tribunals; and it is in a degree incompatible with local autonomy, and the limits of legislative powers intended to be established by the British North America Act, 1867, that measures local in their character, or affecting the internal government of a province, should be the subject of confirmatory legislation by the Imperial Parliament, which has already provided comprehensively for the exercise of adequate local powers, or that provincial legislation should be confirmed merely upon the footing that it may transgress the prescribed limits. Amendments of the British North America Acts affecting legislative powers may not improbably give rise to inferences as to the interpretation and extent of the powers previously granted; they may suggest, and would ordinarily imply that the provisions evidenced by the amendment were in their effect theretofore lacking; and it would be unjust that one of the provinces should be at disadvantage in the interpretation of its powers by reason of an amendment brought about at the instance of another province to sanction a power which upon the assumption of the amendment the provinces did not possess.

For these reasons the undersigned considers it inexpedient that the situation described by the Attorney General of British Columbia should be made the foundation of the enactments which are proposed on behalf of the province; and he recommends that a copy of this report, if approved, be transmitted for the information of

the Secretary of State for the Colonies, and of the Lieutenant-Governor of British Columbia; and moreover that the Secretary of State for the Colonies be informed by telegraph in reply to his despatch of 27th February last that Your Excellency's Government do not consider the proposed legislation necessary or advisable.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

DEPARTMENT OF JUSTICE, OTTAWA, 19th July, 1917.

DEAR SIR.—Referring to your letter of 19th ultimo, I am disposed to think that it cannot possibly be held that the existing legislature of British Columbia has no power to legislate by reason of the questions to which you allude affecting the authority of the preceding legislature to extend its time or to enact the legislation which it did enact during the period of extension. The letter of your Provincial Attorney General to the Secretary of State, of 6th January, 1917, submitting copy of the Bill proposed by British Columbia for enactment by the Parliament of the United Kingdom, did not express a doubt as to the powers of the present legislature, and therefore I did not realize that any such question was apprehended, but I confess upon considering the matter that I feel quite satisfied that however the question may turn as to individual seats, the authority of the legislature as a body does not admit of a doubtful question.

Moreover I would think even if the present legislature be constituted in a manner to render its legislative proceedings incompetent, the remedy should be sought by means of a regular election, rather than in Imperial legislation concerning provincial matters; and more specially so, seeing that the proposal for a validating enactment involves nothing less than the constitution of an assembly for British Columbia by Imperial Act rather than in the constitutional manner.

Yours very truly,

CHAS. J. DOHERTY,
Minister of Justice.

The Honourable H. C. BREWSTER, Premier,
Victoria, B.C.

6 GEORGE V, 1916

(Approved 21 June, 1917)

19th June, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia for 1916, received by the Secretary of State for Canada on the 22nd June last, and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

BRITISH COLUMBIA

7-8 GEORGE V, 1917

(Approved 30 May, 1918)

OTTAWA, 21st May, 1918.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislature of British Columbia passed in the year 1917, 7 and 8 Geo. V, and he is of opinion that these statutes may be left to such operation as they may have with the exception of chapter 67, entitled "An Act to validate certain sales of land for arrears of taxes" and chapter 71, entitled "An Act to amend the Vancouver Island Settlers' Rights Act 1904" which are reserved for separate reports.

As to chapter 76 entitled, "An Act to amend the Vancouver Corporation Act, 1900" the undersigned has had under consideration a complaint submitted to the Prime Minister by Messrs. Geo. D. Atkin & Co., of London, enclosing a copy of a circular letter of 14th July last addressed by the Secretary of British Columbia Electric Railway Company Ltd. on behalf of the directors to the share-holders of the company, explaining to the share-holders that by virtue of the legislation in question the City of Vancouver will be permitted to compete in the supply of electric light and power after 1st June 1919. It would appear that the city had applied to the legislature in 1900 for reconsideration of its act of incorporation with a view to obtain among other objects, the repeal of a provision prohibiting competition with the company except upon condition of willingness to treat for the acquisition of the company's franchise. This application was opposed on behalf of the company and in the result a compromise was reached, satisfactory at the time to both parties, whereby legislation was enacted which contains certain limitations against competition. These limitations have now been withdrawn by the legislation in question, and it is upon that account that Messrs. Atkin & Co., protest against the legislation as affecting investors.

Upon consideration of the correspondence submitted, the undersigned concludes that the rights of the company, depending merely upon antecedent legislation, were such as the legislature might change in the execution of its constitutional powers, and that Your Excellency in Council is not required to justify or to become responsible for the policy of the legislation in declining to exercise the power of disallowance upon the grounds suggested.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Humbly submitted,

CHAS J. DOHERTY,

*Minister of Justice.**(Approved 30 May, 1918)*

OTTAWA, 21st, May, 1918.

To His Excellency the Governor General in Council:

The undersigned has had under consideration a statute of the Legislature of British Columbia, Chapter 71 of 7 and 8 George V (1917), assented on 19th May, 1917, and received by the Secretary of State for Canada on 31st May, intituled: "An Act to amend the Vancouver Island Settlers' Rights Act, 1904." This is a very short Act, consisting of two sections, which are here reproduced as follows:—

1. This Act may be cited as the "Vancouver Island Settlers' Rights Act, 1904, Amendment Act, 1917."

2. Section 3 of the "Vancouver Island Settlers' Rights Act, 1904," being Chapter 54 of the Statutes of 1904, is hereby amended by striking out the words "within twelve months from the coming into force of this Act," in the second and third lines of said section, and inserting in lieu thereof the words "on or before the first day of September, 1917."

It will be observed that this amendment, upon the face of it, merely extends to the first day of September, 1917, a time which had been limited by the Vancouver Island Settlers' Rights Act, 1904, and by reference to the latter Act it will be perceived that the time so limited had expired on 10th February, 1905. But involved in this very simple legislative expedient is an invasion of valuable proprietary rights which has occasioned an application for disallowance based upon irresistible grounds.

The Act of 1904 recites an intention to make provision for persons who had settled upon lands within the belt reserved for railway purposes on Vancouver Island by Order in Council of 30th June, 1873, for the purpose of implementing Section 11 of the Terms of Union upon which British Columbia entered the Confederation, and that the said settlers are entitled to peaceable and absolute possession of the land occupied by them and title thereto in fee simple in accordance with the statutes of British Columbia at the time existing governing the disposal of public lands; and it proceeds to enact that upon application on behalf on any settler to the Lieutenant Governor in Council within twelve months from the coming into force of the Act, which was assented to on 10th February, 1904, showing that the settler had occupied or improved land within the Railway Belt prior to the enactment of the Settlement Act of 1883, Cap. 14 of 47 Vic., with the *bona fide* intention of living on the said land, accompanied by reasonable proof, a grant of the fee simple in such land should be issued to him or his legal representative, free of charge, and in accordance with the provisions of the Land Act in force at the time when said land was first occupied or improved by the settler; and moreover that the rights granted to the settlers under the said Act should be asserted by and defended at the expense of the Crown.

Application for the disallowance of the Act of 1904 was made to his Excellency the Governor General in Council upon petition of the Esquimalt and Nanaimo Railway Company setting forth, as the fact was, that the lands within the Railway Belt were granted to the Dominion Government for the purposes of constructing and to aid in the construction of a railway between Esquimalt and Nanaimo; that the Dominion had contracted by statutory authority for the construction of the railway upon terms that these lands in so far as they might be vested in Her late Majesty, or held by her Majesty for the purposes of constructing or to aid in the construction of the railway, should be conveyed to the contractors upon completion of the work to the satisfaction of the Governor in Council; that it was moreover agreed by the contract that the land was to be granted to the company subject to the stipulation, proviso or exception, *inter alia*, that every *bona fide* squatter who had previously occupied or improved any of the said lands for a period of one year prior to the 1st day of January, 1883, should be entitled to a grant of the freehold of the surface rights of the said squatted land to the extent of 160 acres at the rate of \$1.00 per acre; that the Esquimalt and Nanaimo Railway completed the work to the satisfaction of the Governor in Council and received from the Dominion a grant of the lands, subject to the statutory terms and provisions. Upon these and other allegations which will appear upon reference to the papers herewith the Esquimalt and Nanaimo Railway Company submitted that the Act should be disallowed as effecting an unjust confiscation of the company's rights in the property. No question was suggested as to the rights which by legislation of 1883 the squatters were recognized to possess, and by which the title of the company was affected, but it appeared that the squatters were not satisfied with the provision made for them, and that they had agitated claims which had been the subject of investigation, with the result that they were found entitled to further consideration by the provincial authorities. These facts were set up by the Government of British Columbia in reply to the petition presented by the

company, and the Government endeavoured to justify the legislation by the submission of an argument intended to show that certain settlers who had, previously to the Settlement Act of 1883, recorded tracts of unoccupied, unsurveyed and unreserved Crown lands had acquired a right by the legislation then in force to obtain title to the lands so recorded; that this right continued irrespective of the provisions of the Settlement Act, or was not affected by those provisions, and that the legislature did not thereby convey to the Dominion any lands within the Railway Belt to which the settlers had lawful claim; it was suggested that the alleged right of these settlers, although, in the absence of further legislation, incapable of vindication at their own suit, could be asserted by action brought either by the Attorney General on behalf of the province, or by the settlers themselves with the aid of a provincial legislative grant, and it was the latter course as stated by the provincial reply which commended itself to the advisers of the Lieutenant Governor.

It may be observed here, without inquiring further into the merit of this argument, that, whatever weight the argument may possess as to settlers of the description to which it applies, the settlers who are benefited by the Act of 1904 are defined to mean those persons "who prior to the passing of the said Act (Chapter 14 of 47 Vic.) occupied or improved lands situated within the said Railway Belt with the *bona fide* intention of living thereon," and that settlers of this description are not distinguishable from those who are otherwise named squatters.

By the report of the Minister of Justice upon the application for the disallowance of the legislation of 1904, approved by His Excellency in Council on June 21 of that year, the Minister stated that it was unnecessary to enter minutely into the history of the Railway Belt; that it was sufficient to state that it was set apart in pursuance of the Terms of Union with British Columbia to be appropriated in furtherance of the construction of the proposed railway to connect British Columbia with the Eastern Provinces; that by the Settlement Act of 1883 the Railway Belt was granted to the Dominion Government for the purpose of constructing and to aid in the construction of the Esquimalt and Nanaimo Railway; that the Dominion in turn had granted the property to the company, and that under these circumstances if the Act would have the effect apprehended by the railway company of divesting the company of its title granted by the Government of Canada, in respect of any of the lands in the Belt, the Minister would feel it to be his duty to recommend disallowance in order to prevent the consummation of such an injustice. The Minister considered, however, that the Act could not have this effect for reasons which he stated; but unfortunately it transpired ultimately by the judgment of the Judicial Committee of the Privy Council in the case of *McGregor vs. Esquimalt and Nanaimo Railway Company*, 1907, Appeal Cases, 462, that the provincial grants authorized by the statute did operate to convey the fee simple, notwithstanding the previous transfers or conveyances as between the Governments and as between the Dominion and the respondent company. In the meantime the Esquimalt and Nanaimo Railway Company, which had been constructed and was being worked under provincial powers, was by Dominion statute of 1905 declared to be a work for the general advantage of Canada, and the provincial powers of legislation with regard to the company were thereby transferred, but this circumstance was, upon ordinary principles, held not to affect the consideration of rights in the pending case. Subsequently, in view of the result of the litigation the company succeeded in obtaining from the Government of British Columbia an agreement of indemnity or for compensation in respect of the lands of which the company had been thus deprived, and this arrangement is evidenced by provincial statute, Chapter 17 of 1910, which does not, however, extend to provide any compensation for the loss to which the company is subjected by the operation of the present statute.

The Esquimalt and Nanaimo Railway Company, the Canadian Collieries (Dunsmuir), Limited, and the National Trust Company, Limited, have now submitted a joint petition for disallowance of the statute, Chapter 71 of 1917, copy of

the petition submitted herewith, and these companies represent that the legislation constitutes an undue interference with the policy of the Dominion in respect of the disposition whereby in the general public interest the Railway Belt was made available to the Esquimalt and Nanaimo Railway Company in consideration of the building of the railway, abrogating *pro tanto* the agreement between the Dominion been constructed and was being worked under provincial powers, was by Dominion to the railway company in pursuance of the general arrangement, and moreover divesting the railway company and the Canadian Collieries, claiming under the company, as well as the bondholders represented by the Trust Company of a very valuable portion of their assets or security; the lands in question being coal-bearing lands of great value, either as ascertained or in prospect.

Upon reference of the petition for the consideration of the local government, the Attorney General of the Province submitted in reply a memorandum, copy herewith, in which he urges that the amending Act involves no principle not sanctioned by the Act of 1904, and that, since the latter Act was permitted to remain in operation, Your Excellency's Government for the sake of consistency should reject the petitioner's claim. The Attorney General, however, relies principally upon the fact, which the petitioners indeed may admit without affecting their case, that the settlers had claims which were entitled to be considered, and that this fact was recognized not only locally but by the Government of the Dominion, which issued a commission in 1897 to inquire into the matter. The commissioners' report is quoted, finding that although the settlers, speaking generally, had no legal claim to the coal and other minerals under their lands, they had a just claim for redress at the hands of the Province, which it was the duty of the Province to accommodate. Upon these findings the Attorney General contends, remarkably enough, that the legislation is in keeping with the policy of the Dominion, because the Dominion caused the claims of the settlers to be investigated, and in execution of the duty and obligations of the Province, because it was found that the Province should compensate the settlers. He urges moreover that the Act is *intra vires* of the Province, which is not denied, and that disallowance would involve a serious interference with provincial rights.

The petitioners having expressed a desire that counsel should be heard on their behalf, an appointment was made, in exception to the ordinary procedure for consideration of applications for disallowance, and the Attorney General was notified as well as the petitioners. The argument was heard before the Prime Minister, the undersigned and the Minister of Public Works, counsel representing the three petitioning companies, and also, in opposition, the Granby Consolidated Mining, Smelting and Power Company, Limited, which is understood to claim under grants issued by the Province pursuant to the authority of the Act under consideration. The Attorney General of British Columbia was not represented, but presumably the Granby Company was notified by the Attorney General, and represented views with which he was in accord. At the hearing the matter was very fully discussed, and the principal argument presented in support of the legislation on behalf of the Granby Company, which was the only interest appearing to uphold the legislation, was that the settlers' claims had been of long standing, antedating in their origin the legislation under which the title passed from the Province to the Dominion, and from the Dominion to the Esquimalt and Nanaimo Railway Company; that the quieting of these claims was eminently a proper matter for disposition by the local legislature, and that Your Excellency's Government ought not to review the conclusions reached and provincially sanctioned for the settlement of these claims.

On the other hand it was urged, and in fact it was not denied, that the company had received its land grant in pursuance of the agreement of the Government of Canada founded upon legislation sanctioned by the Dominion, and the Province, which defined precisely the measure of the settlers' claims; that large pecuniary interests were involved, and that the companies were not in any wise responsible for the

settlers' claims, or affected by them, otherwise than in so far as the Act in question, or the exercise of the powers conferred by the Act, might operate to transfer the title or diminish the area of the company's coal-bearing lands.

It will be observed that although after the effect of the statute of 1904 had been judicially declared an agreement was reached between the railway company and the Province as evidenced by the statute of 1916, to afford the company a measure of compensation for the loss which it had suffered through the operation of the Act, no provision is now made or suggested to compensate for the loss which the petitioners suffer by reason of the further grants issued under the authority of the present legislation, and indeed it is urged on their behalf that it is impossible in the present state of development of the property to realize the loss to which they are subjected by reason of the granting of their lands and mineral rights by the Province under the authority of the statute.

In these circumstances the question which presents itself for Your Excellency's consideration is whether it is compatible with a proper fulfilment of the duty charged upon Your Excellency in relation to the power of disallowance that the Act now in question should be permitted to remain in operation.

It will be perceived by review of the reports of the Ministers of Justice from the Union to the present time, that there has been great reluctance to interfere with provincial legislation, and that notwithstanding a considerable number of cases in which disallowance was sought upon established grounds, perhaps not more than a single statute has been actually disallowed by reason merely of the injustice of its provisions. Cases are not lacking, however, in which disallowance has been avoided by reason of amendments undertaken by the local authorities, upon the suggestion of the Ministers of Justice, to remedy the complaints against the original Acts; and certainly the constitutional propriety and duty of reviewing provincial legislation upon its merits when it is the subject of serious complaint has been maintained by every succeeding Minister of Justice from the time of the Union, save only the immediate predecessor of the undersigned, who suggested in effect that the power had become obsolete. In the opinion of the undersigned the power is unquestionable and remains in full vigour. Indeed the very careful consideration which the Ministers have been accustomed to give to applications presented from time to time for disallowance depending upon reasons of inequality or hardship is inconsistent with any other view. But although the Governor in Council exercises constitutionally a power of review and control, he is certainly not responsible for the policy, wisdom or expediency of provincial legislation, and therefore he should not disallow merely because an Act is in his judgment ill-advised, untimely or defective; or because its project lacks either in principle or detail that degree of equity and consideration of the existing situation which in the opinion of the Governor in Council should have commended itself to the legislature. Indeed it must be realized in the exercise of the power of disallowance that legislative judgment upon provincial matters is committed to the legislatures and not to Your Excellency in Council, and that the former therefore have a reasonable and just degree of freedom to work out their measures of legislation in the manner which the legislatures deem requisite or advisable or best adapted reasonably to provide for the situation in hand. On the other side it cannot be denied that there are principles governing the exercise of legislative power, other than the mere respect and deference due to the expression of the will of the local constituent assembly, which must be considered in the exercise of the prerogative of disallowance. It may be difficult, and it is not now necessary to define these principles for purposes of general application; certainly although legislative interference with vested rights or the obligation of contracts, except for public purposes, and upon due indemnity, are processes of legislation which do not appear just or desirable, nevertheless, it would, in the opinion of the undersigned, be formulating too broad a rule to affirm that local legislation affected by these qualities should in all cases be displaced by means of the prerogative.

The present case is, however, of very exceptional character, and it must fall within any just limitation of the rule. There can be no doubt about the intention of the enactment having regard to the sequence and history of the legislation. A large area of valuable land was transferred by the Province to the Dominion destined and appropriated by statutory arrangement and sanction as between the two Governments for the benefit of the Esquimalt and Nanaimo Railway Company, which undertook the burden of constructing and operating the railway. These lands were in turn transferred by the Dominion to the company upon the terms of its contract. The stipulations as to title were precise and definite, and the situation, claims or rights of settlers and squatters were particularly considered and provided for. The settlers were accorded the right to obtain grants of 160 acres for a period of four years upon payment of \$1.00 per acre and squatters who had been on the land for the purpose of improving it for at least one year were entitled to receive the surface rights only of 160 acres each upon payment of the like price. Subject to these conditions the lands passed to the company, and the company is certainly justified to look not only to the Province but also to the Dominion, with whom it contracted and from whom it received its grant, to see that its title is not impaired by legislative revision of the terms after performance of the contract by which the lands were earned. The identic legislation on the part of the Province and of the Dominion of 1883 evidences a matter of Dominion as well as of local policy which has its foundation in the terms upon which British Columbia entered the Union, by which, in consideration of the construction, equipment and undertaking to operate and maintain the railway, the company received the statutory subsidies, including the lands in question, subject to the special accommodation of the claims of settlers and squatters, for which provision was expressly made; and the process by which, notwithstanding these solemn assurances, a valuable portion of the property which it was thus intended that the company should receive, and which the company did receive, is taken away by the exercise of the legislative authority of one of the parties to the tripartite agreement, cannot adequately be characterized in terms which do not describe an unjustifiable use of that authority, in conflict with statutory contractual arrangements to which the Government of Canada as well as the Province was a party. The Railway Company, the Collieries Company, as assignee of some of these lands, and the bondholders who have loaned their money to assist in the operation of the mines upon security of a statutory title, the most conclusive which the law knows, submit their case for the consideration of Your Excellency in Council; they invoke the powers conferred by the Constitutional Act; and the undersigned, in agreement with his predecessor of 1904, considers that both the proper execution of these powers, and the obligation of honour and good faith in the administration of the transaction on the part of Your Excellency in Council, require that the Province should not be permitted substantially to diminish the consideration of the contract.

Upon the submission of the Attorney General that disallowance would involve a serious interference with provincial rights, the undersigned observes that provincial rights are conferred and limited by the British North America Acts, and while the Provinces have the right to legislate upon the subjects committed to their legislative authority, the power to disallow any such legislation is conferred by the same constitutional instrument upon the Governor General in Council, and incident to the power is the duty to execute it in proper cases. This power and the corresponding duty, are conferred for the benefit of the Provinces as well as for that of the Dominion at large. The system sanctioned by the Act of 1867, as interpreted by the highest judicial authority, "provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself, except under the control of the whole acting through the Governor General." The mere execution of the power of disallowance does not therefore conflict with provincial rights, although doubtless the responsibility for the exercise of the power which rests with Your Excellency in Council ought to be so regulated as not to be made effective except in

those cases in which, as in the present case, the propriety of exercising the power is demonstrated.

The undersigned recommends therefore that the said statute Chapter 71 of 1917, intituled, "An Act to amend the Vancouver Settlers' Rights Act, 1904," be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his Government, also that copies be transmitted to the petitioners, the Esquimalt and Nanaimo Railway Company, Canadian Collieries, Limited, and the National Trust Company, Limited.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

Chapter 71 of 1917 was accordingly disallowed 30 May, 1918.

MEMORANDUM with Reference to the Petition of the Esquimalt and Nanaimo Railway Company, Canadian Collieries (Dunsmuir) Limited and The National Trust Company Limited for the Disallowance of Chapter 71 Statutes of B.C. 1917.

The grounds for disallowance are summarised on page 14 of the petition and for purpose of our consideration may be divided into two classes.

1. That the legislation is an interference with the policy of the Dominion under this heading is contained paragraphs (a) (b) and (c).
2. That the legislation is an interference with the rights of private property. Under this heading is contained paragraphs (d) (e) and (f).
1. That the legislation is an interference with the policy of the Dominion.

The Act of 1917 is an amendment to the "Vancouver Settlers' Rights Act 1904." Under the Act of 1904, the settlers were required to file their claims within twelve months. The 1917 Act extends the time for filing these claims to the First day of September 1917. It will be seen, therefore, that the 1917 Act involves no principle not contained in the original Act. If the Dominion Government should disallow the amendment it would be inconsistent with its course in permitting the original Act to stand.

The only contention raised against this argument by the petitioners is that the Memorandum of Sir Charles Fitzpatrick as Minister of Justice, indicated that if he had appreciated the legal effect of the original Act, he would have advised disallowance. It is submitted, however, that this argument is not a sound one upon which to base a reversal of policy by the Dominion Government for the following reasons:—

(1) The remarks of the Minister of Justice were merely dicta and it does not follow that he would have recommended disallowance had he been required to seriously consider the situation, knowing that the point upon which he was then proceeding was not well founded in law.

(2) The Government of the day is not bound by the dictum of the former Minister of Justice, but rather by the official actions of the previous Government. The attitude of the Dominion Government throughout has been consistent in recognizing the right of the Province to deal with the lands in question and to make provision for the settlers. At pages 63 and 64 of the printed documents in book form filed by the petitioners herein, appears certain questions which were asked in the House of Commons in 1896 by Mr. McInnes, member for Vancouver Island, in connection with settlers' rights on the Esquimalt and Nanaimo Railway belt. These questions were answered by the Minister of Marine and Fisheries.

Answers (2) and (3) read as follows:—

"It was left to the Provincial Government to complete all transactions which had been initiated before the transfer of the railway reserve to the Dominion Government in trust.

(3) As explained in the answer to question No. 2 pre-emptors prior to the 1st January 1882, and indeed up to the date when the lands in question were transferred by the Province to the Dominion, derived their titles from the local Government, the lands for which they had records having been excluded by the statute from the transfer to the Dominion Government in trust. The Government of Canada, therefore, had no responsibility for the form of title. It was a question of the completion by the Provincial Government of a contract into which they had already entered with the pre-emptors."

In the following year, an Order in Council was passed appointing Mr. T. G. Rothwell, of Ottawa, Commissioner, to inquire into the rights of these settlers. The Order in Council contains the following recital:—

"Whereas we deem it expedient that each of the settlers on the tract of lands before mentioned claiming to be entitled to more than a grant of the surface rights only to any land within such tract, or any person claiming title from such settler, should be afforded an opportunity of establishing his title to the land he claims before a Commissioner appointed for such purpose."

The appointment of this Commissioner was therefore a clear recognition by the Dominion that the settlers were entitled to consideration. The report of Commissioner Rothwell appears in the Book of Documents, pages 67-82. I would refer to this report in full, and I now quote from parts thereof.

At the bottom of page 68 as follows:—

"When I have completed this task I feel satisfied that I will have established the conclusion I have arrived at, that although these settlers, speaking generally, have now no legal right to the coal and other minerals under their lands, they or those claiming from them have a just claim for redress at the hands of the Province in which they live and a claim which that Province cannot honourably refuse to recognize and settle. Up to the present date the Province appears to have been perfectly satisfied that all blame for this matter should be laid upon the Dominion, notwithstanding that the sole interest of the Dominion was that of trustee for the Province; but even if the Dominion was responsible for the injustice which I consider has been done to these settlers, it is the duty of the Province to redress that injustice."

At the bottom of page 79 and the top of page 80 as follows:—

"The blame does not attach to the above named gentlemen, to the officials of the Department of Lands and Works, nor to the shareholders of the Esquimalt and Nanaimo Railway Company, but it does attach to those who are responsible for the provisions of the Provincial Act, Chapter 14, 47 Victoria, and of the Dominion Act, Chapter 6, 47 Victoria to which I have repeatedly referred. The officials who had to administer the law, appear to have gone beyond the powers of their office in holding for the settlers the lands they claimed. The shareholders of the railway company wanted the best terms that could be secured, and they got them; settlers' rights were no obstacle to be considered, and the necessary legislation was quickly and quietly obtained to trim down such rights to suit the wishes of the shareholders. The then Government of the Province of British Columbia is responsible for that legislation, and it is to a Government of that Province those who suffer from the injustice done, must look for redress. The duty of the then Dominion Government in the matter was only that of a trustee. True, the petition of 1882 received but the worst kind of attention, and similar indifference to these settlers' rights was displayed in the preparation and passing of the Dominion Act, Chapter 6, 47 Victoria; but the duty of safe-guarding the settlers in question was upon the Government of the Province."

and the last two paragraphs on page 81:—

“In view of all the circumstances, which I have thought necessary to mention or refer to in this report, I consider it the duty of the Government of British Columbia, notwithstanding the position the settlers, who are affected by Section 23 of Chapter 14, and subsection 2 of Section 7 of Chapter 6, unquestionably placed themselves in by accepting pre-emption records, subject to such provisions, to take prompt action which will satisfactorily remove the injustice which has resulted from these provisions, and which will end an agitation which was commenced when the provisions of Section 19 of the Clement's Act were first known and which was resumed after the settlers found out that they had received or were to receive a grant of the surface rights only of the lands they had settled upon, and I think I may add without fear of contradiction, had been permitted to settle upon.

British Columbia, rich in her mines, her fisheries, her timber and other of nature's stores, gave bounteously of her most valuable lands to the builders of her Railways. Before such lands passed from her keeping it was the duty of that Province, the duty of those who were charged with the conduct of her public affairs, to make proper and sufficient provision for safe-guarding the rights of all settlers who went into occupation of any of such lands, under the circumstances which have been stated in this report, such provision was not made, however, but, on the contrary, provisions which legalized the injustice against which the settlers had protested, were embodied in the Acts I have referred to. I repeat, therefore, that I consider it the duty of the Government of British Columbia to take such action as will promptly and satisfactorily remove the injustice.”

From the foregoing, it is clear that the Dominion Government acted in the transaction only as a trustee for the Province and that the legislation passed by the Province is in keeping with the policy of the Dominion in having the rights of the settlers investigated and is in conformity with the findings of the Dominion Commissioner as to the duty and obligations of the Province.

(3) The Privy Council in the case of *McGregor v. E. & N. Railway* (1907 A.C. 462) decided that the original Act was *intra vires* of the Province. There is therefore, less ground for disallowance now than there was in 1904.

2. That the legislation is an interference with the rights of Private Property:

It is submitted that the above contention of the petition as a ground for disallowance cannot be sustained for the following reasons:—

(1) The agreement of 1909 between the Company and the Province ratified by the Act of 1910, contains no obligation expressed or implied, that the balance of the settlers who for various reasons had not come in under the 1904 Act, would not thereafter be provided for. It was merely an adjustment by the Province of claims for land already alienated from the Company and a means of securing uncontested titles for the settlers whose claims had been allowed.

(2) The legislation in question is not a violation of private rights but is a tardy recognition of the rights of the settlers as proclaimed by Dominion Commissioner Rothwell.

(3) The Act in question having been declared *intra vires* as dealing with property and civil rights, its disallowance by the Dominion would involve an interference with Provincial rights far graver in its Constitutional aspects than any alleged interference with private rights as set out in the petition.

The principle that the Dominion should not sit in judgment upon the Acts of a provincial legislature enacted within the scope of its legislative authority is well

established. See opinion of Sir Oliver Mowat in "Lefroys Legislative Power in Canada" page 201, and the report of Hon. David Mills with reference to disallowance of Chapter 45 of B.C. Statute 1901.

Both of these opinions are quoted in the petition for disallowance at page 9.

It is submitted that these pronouncements must outweigh any consideration that might be given to the dictum of Sir Charles Fitzpatrick upon which the petitioners so strongly rely.

Respectfully submitted,

J. W. deB. FARRIS,

Attorney-General.

Victoria, B.C.

March 28, 1917.

(Approved 30 May 1918).

DEPARTMENT OF JUSTICE, OTTAWA, 27th May, 1918.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 67 of the Statutes of British Columbia, passed in the 7th and 8th year of His Majesty's reign (1917), and received by the Secretary of State for Canada on 31st May last, intituled "An Act to validate certain sales of Land for arrears of Taxes." It is recited by this Act that certain lands were sold for arrears of taxes under the Taxation Act, the conveyances under which were executed or delivered before the expiry of two years from the day of sale; also the former assessment district of New Westminster was in 1895 divided into two assessment districts, viz:—the District of Vancouver County and the District of Westminster County, and that conveyances of certain lands situate in the former assessment district of New Westminster which by the division aforesaid were comprised in the assessment District of Vancouver County, but were sold for arrears of taxes before the date of the division, were executed by the assessor of the assessment district of Westminster County, and that in like manner some conveyances belonging by the division to the Vancouver District were executed by the assessor of the Westminster District; that doubts have arisen as to the validity of these sales and conveyances, and that it is expedient to validate them. Upon this narrative the Act proceeds to make the conveyances effective notwithstanding that they were made before the expiry of the statutory period or by the wrong assessor. Provisions are introduced, however, for redemption of the lands sold by paying to the collector for the benefit of the purchaser the purchase price and fair value of improvements, with interest at 12 per cent, or if the lands be no longer held by the purchaser, that they may be redeemed within sixty days from the passing of the Act by paying to the collector for the benefit of the holder of the lands the amount of the purchase price, the taxes paid by the holder and the fair value of his improvements, with interest at the rate aforesaid, and there is provision for arbitration of the value of the improvements in case of difference, and further provisions for the necessary procedure.

A petition for the disallowance of this Act, was dated 30th April last, was presented to Your Excellency in Council by John Heron, Hugh Heron and Charlotte Coleman, and copy of this petition, referred for the consideration of the undersigned, was received at the Department of Justice on 10th instant. Copy of the petition is submitted herewith, and it states further in effect that the petitioners were interested in Lots 299, 300 and 301 of Group 1, New Westminster, now Vancouver District, as residuary legatees of Robert Heron, who owned the said lots, and who

died about 13th June, 1904. The petitioners proceed to allege that on the 22nd July, 1896, one E. L. Kirkland, an alleged assessor of the District of New Westminster, unlawfully and wrongfully, and without the knowledge or consent of the said Robert Heron or of your petitioners, purported to sell the said lands for taxes, and on the 22nd July, 1898, purported to execute a deed of the same to the alleged purchaser; and on the 9th December, 1903, one W. L. Fagan, an alleged assessor of the District of Vancouver, unlawfully and wrongfully, and without the knowledge or consent of the said Robert Heron or of your petitioners, purported to sell the lands for taxes, and on the 23rd February, 1906, purported to execute a deed of the same to an alleged assignee of the alleged purchaser.

The first mentioned tax deed bears date one day before the expiry of two years from the date of the tax sale—the statute allows the deed to be made only after that period has elapsed—and the person who executed it was not the assessor for the County of Vancouver, in which the land was situated, but the assessor for the County of Westminster, who had no authority or jurisdiction whatever in the matter.

As to the secondly mentioned tax sale, one of the executors of the will of the said Robert Heron, on 12th October, 1904, made lawful tender to the said W. L. Fagan; but the said Fagan refused to permit the lands to be redeemed, unless under the title supposed to have been acquired by virtue of the first sale.

At the request of your petitioners the said executors did, by deed under seal dated 31st July, 1913, grant and convey the said lots to your petitioners.

It appears moreover that the petitioners brought an action in the Supreme Court of British Columbia on 30th September, 1913, claiming a declaration of title, and that the conveyances were void; that they failed in this action at the trial upon appeal to the Court of Appeal for British Columbia, but that on appeal to the Supreme Court of Canada it was decided, reversing the judgments below, that the sales and conveyances in question were null and void, and that the deeds should be struck off the registry. The property in question is said to be worth \$15,000, and the petitioners claim that the said Act (a) is unjust and contrary to sound principles of legislation; (b) confiscates private vested rights without providing for compensation, and is therefore an irreparable injustice; and (c) unduly interferes with private rights and property which has been held by the highest court of last resort in the Dominion to belong to your petitioners.

When the petition came to be considered in due course in the department the Deputy Minister of Justice on 20th instant telegraphed the Attorney General of British Columbia as the time limited was not adequate for correspondence through the usual channels, as follows:—

"John Heron, Hugh Heron and Charlotte Coleman present petition for disallowance of Tax Sale Notification Act, Chapter sixty-seven of nineteen seventeen upon ground that petitioners' title to lots two hundred and ninety-nine, three hundred and three hundred and one, group one, New Westminster District established in litigation by judgment of Supreme Court of Canada of twenty-fourth June nineteen sixteen declaring tax sale and deed to British Columbia Land and Investment Agency null and void. Petitioners allege these lots worth fifteen thousand dollars and that Act in question operates to reverse judgment of Supreme Court and confiscate petitioners' property. Please telegraph for information of Minister of Justice any observations which your Government desire Minister to consider in reporting upon petitioners' application. Time for disallowance expiring."

On 24th instant, the Deputy Minister having received no reply, again telegraphed the Attorney General, as follows:—

"Reply to my telegram twentieth instant re Tax Sale Validation Act urgently required, and in this connection please state whether your Government

would undertake to promote amendment at next session providing that rights adjudicated or in pending cases shall not be prejudiced or affected by the provisions of this Act";

and afterwards on the same day the Deputy Minister received a reply from the Attorney General to his first message, dated 23rd instant, reading as follows:—

"Replying your telegram twentieth, we consider Tax Sale Validation Act, Chapter Sixty-seven of nineteen seventeen, fully justified under existing circumstances. Legislature considered matter fully and came to conclusion that the Heron suit, as well as several other suits then pending, possessed no real merit, as these suits placed in jeopardy titles of bona fide purchasers who had been in possession for years after having purchased at tax sale. There seemed to be no good reason for placing cases in litigation on a higher place than others. The circumstances were peculiar. Purchases at a tax sale held years ago in the former assessment district of New Westminster had tax deeds given to them one day too soon and in addition they were executed by the wrong assessor owing to a division of the district in 1895 to New Westminster County and Vancouver County. In the case of Heron vs. Lalonde the heirs of the original owners who allowed taxes to accumulate with the result that their lands were sold for taxes to bona fide purchasers asked for a declaration that the tax sale deed was a nullity and that they should be declared the true owners on the technical grounds referred to, notwithstanding that in the meantime the purchasers were in occupation for years, the land greatly improved in value or possibly changed hands several times. The only ground for urging that this legislation should not affect the case of Heron vs. Lalonde would be that the legislature should have a higher regard for the law costs which the plaintiffs incurred in the litigation than for the undoubted rights of the purchasers. They doubtless incurred some costs, but they were incurred in an effort to deprive bona fide purchasers of their just rights, and their diligence in that respect should not be regarded. Further, as a matter of facts, the case of Heron vs. Lalonde was not concluded, as it might still go to the Privy Council, and I understand that was the intention of the defendants. We did however provide by this Act that the original owners might redeem by paying for the use of the purchasers the purchasers' price, taxes and the value of improvements, the same to be fixed by arbitration, giving them sixty days to do so, a period quite long enough to give parties who had no moral or equitable claim to the property. The situation was intolerable and as stated hundreds of other cases were in a similar position; we did not discriminate between titles in litigation and titles in which litigation was not pending. Why should those who started unmeritorious litigation be placed in a better position than others, or be allowed to get away with the fruits of litigation based on the technicalities referred to. If the Act were not passed not only would many titles be imperilled, but it would have affected loan securities and investments as well. Further these titles given to bona fide purchasers were Government titles and not municipal titles. They are signed by the Government assessor as an official deed of the Crown in the right of the province. It was incumbent on the Crown to protect its titles doubly, so when the mischief was caused by the Government's division of the assessment district and the act of its own assessor in signing the deed a day too soon. It is submitted that there is ample precedent for allowing provincial legislation overriding judgment of the court to stand, and that following the practice laid down in the past by your department legislation within the competence of provincial legislature should not be disallowed on ground of alleged hardship."

Although the undersigned does not find himself in agreement with all these observations of the Attorney General, it is true that the situation which the Attorney

General describes was a proper one for legislative action. Titles have been transferred for arrears of taxes in intended execution of statutory powers, and presumably the proceeds of these sales have been appropriated or distributed conformably to statutory requirements. There seems to have been considerable difference of judicial opinion, but in the result the conveyances have been declared invalid for defective procedure. It is not suggested that the taxes were not justly due; that the lands were not chargeable, or that they would have been redeemed previously to sale if the sales had taken place at the time, or if the conveyances had been executed by the officer authorized by statute. The judgment of the Supreme Court directed that there should be no costs to either party in that court, or in the courts below, and the statute advises a provision, such as it is, enabling the former proprietors to redeem their lands upon compliance with the conditions prescribed by the statute. In these circumstances the undersigned is of opinion that Your Excellency in Council would not be justified to interfere with the operation of the Validating Act merely because of the absence of provisions which would have commended themselves to Your Excellency in Council for the better protection of litigants in pending cases, or of those who had already succeeded to have their claims judicially established.

The undersigned recommends therefore that the statute be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his Government; also that a copy be transmitted to the petitioners' solicitor.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

(Petition for disallowance of Cap, 67 of 1917).

To His Excellency the Governor General in Council:

The petition of John Heron, of the City of Vancouver, in the Province of British Columbia, Hugh Heron, of the City of Chicago, in the State of Illinois, one of the United States of America, and Charlotte Coleman, wife of Samuel Coleman, of the Town of Elbow Lake, in the State of Minnesota, one of the United States of America.

Humbly Sheweth as Follows:

1. On the 3rd February, 1893, one Robert Heron became the owner of Lots 299, 300 & 301, Group 1, New Westminster (now Vancouver) District, according to maps or plans of Subdivision filed in the Land Registry Office at the City of Vancouver, in the Province aforesaid, by virtue of a certain conveyance in fee simple, and the said conveyance was duly registered in the Land Registry Office on the 15th February, 1893, whereby the said Robert Heron became the registered owner of the said lands, and Certificate of Title No. 2167-C was, on 15th February, 1893, duly issued by the District Registrar of the Land Registration District in which the said lands were situate.

2. The said Robert Heron died on or about the 13th June, 1904, having duly made his last will and testament, dated 1st June, 1904, whereby he devised all his real and personal property to His Executors therein named upon trust to sell the same, and, after payment of his just debts and funeral expenses, to divide the residue among Your Petitioners in equal shares.

3. On the 22nd July, 1896, one E. L. Kirkland, an alleged Assessor of the District of New Westminster, unlawfully and wrongfully, and without the knowledge or consent of the said Robert Heron or of Your Petitioners, purported to sell the said lands for taxes, and on the 22nd July, 1898, purported to execute a deed of the same

to the alleged purchaser; and on the 9th December, 1903, one W. L. Fagan, an alleged Assessor of the District of Vancouver, unlawfully and wrongfully, and without the knowledge or consent of the said Robert Heron or of Your Petitioners, purported to sell the said lands for taxes, and on the 23rd February, 1906, purported to execute a deed of the same to an alleged assignee of the alleged purchaser.

4. The first mentioned tax sale deed bears date one day before the expiry of two years from the date of the tax sale—the Statute allows the deed to be made only after that period has elapsed—and the person who executed it was not the Assessor for the County of Vancouver, in which the land was situated, but the Assessor for the County of Westminster, who had no authority or jurisdiction whatever in the matter.

5. As to the secondly mentioned tax sale, one of the Executors of the will of the said Robert Heron, on 12th October, 1904, made lawful tender to the said W. L. Fagan; but the said Fagan refused to permit the lands to be redeemed, unless under the title supposed to have been acquired by virtue of the first sale.

6. At the request of Your Petitioners, the said Executors did, by Deed under seal dated 31st July, 1913, grant and convey the said lots to Your Petitioners.

7. An action was brought in the Supreme Court of British Columbia on 30th September, 1913, by Your Petitioners, for a declaration that the said lands had been unlawfully and wrongfully sold for taxes, and that the said sales and any re-sales of the said lands were invalid and of no effect, and that the lands were the property of Your Petitioners; and also for a declaration, judgment, or decree setting aside and making void the said alleged tax sale, and all subsequent transfers, conveyances, &c. and for an order directing the District Registrar of Titles to register Your Petitioners as owners of the said lands.

8. At the trial, the said action was dismissed by the Honourable Mr. Justice Clement.

9. Your Petitioners thereupon appealed to the Court of Appeal for the Province of British Columbia against the said judgment, and on 2nd November, 1915, the said appeal was dismissed.

10. Your Petitioners thereupon appealed to the Supreme Court of Canada; and on 24th June, 1916, the said Supreme Court of Canada gave judgment allowing Your Petitioners' appeal, and reversing and setting aside the said judgments of the Supreme Court of British Columbia and the Court of Appeal for the Province of British Columbia. The formal judgment of the said Supreme Court of Canada reads as follows:—

“IN THE SUPREME COURT OF CANADA

SATURDAY, the 24th day of June, A.D. 1916.

Present:

The Right Honourable Sir Charles Fitzpatrick, G.C.M.G., Chief Justice.
The Honourable Mr. Justice Davies.
The Honourable Mr. Justice Idington.
The Honourable Mr. Justice Anglin.
The Honourable Mr. Justice Brodeur.

Between:

John Heron, Hugh Heron, and Charlotte Coleman, wife of Samuel Coleman,

(Plaintiffs) Appellants,

and

Abraham Lalonde, W. L. Fagan, Assessor & Collector of the Assessment District of Vancouver, and J. W. Creighton, Assessor and Collector of the Assessment District of New Westminster,

(Defendants) Respondents.

The appeal of the above named Appellants from the judgment of the Court of Appeal for British Columbia, pronounced in the above cause the 2nd day of November, A.D. 1915, affirming the judgment of the Supreme Court of the Province of British Columbia rendered in the said cause on the 4th day of March, A.D. 1915, having come on to be heard before this Court on the 3rd and 4th days of May, A.D. 1916, in the presence of Counsel as well for the Appellant as the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment:

THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was allowed, and the said judgment of the Court of Appeal for the Province of British Columbia should be and the same was reversed and set aside, and the said judgment of the Supreme Court of British Columbia should be and the same was reversed and set aside.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the sale for arrears of taxes by the Respondent W. L. Fagan of the lands in question to E. B. Morgan, and the deed from the said Fagan purporting to convey the said lands to the British Columbia Land & Investment Agency, Limited, pursuant to an assignment to the said British Columbia Land & Investment Agency, Limited, made by the said E. B. Morgan, and all deeds of the said lands from the said British Columbia Land & Investment Agency, Limited, or their transferees, vendees, or assigns, purporting to convey the said lands, be and the same were respectively set aside and declared to be null and void.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the registration of the said deeds, transfers, and assignments be struck off the registration book of the Registry Office at Vancouver, British Columbia.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that there should be no costs to either party in this Court or in the Courts below.

E. R. CAMERON,
Registrar."

11. At the time the litigation commenced, the lots in question were worth fifteen thousand dollars (\$15,000).

12. On the 19th day of May, 1917, the Province of British Columbia passed an Act, being Chapter 67, known as "An Act to Validate certain Sales of Land for Arrears of Taxes." The said Act recites (in part):—

"AND WHEREAS the former Assessment District of New Westminster was in the year 1895 divided into two Assessment districts—namely, of Vancouver County and of Westminster County—and it has happened that the conveyances of certain lands situate in that part of the former Assessment District of New Westminster which after the division aforesaid became comprised in the Assessment District of Vancouver County, and which were sold for arrears of taxes before the date of the division, were executed by the Assessor of the Assessment District of Westminster County, and that certain lands situate in that part of the former Assessment District of New Westminster which after the division aforesaid became comprised in the Assessment District of Vancouver County, being assessed before the date of the division, were, after the date of the division sold for arrears of taxes and the conveyances thereof executed by the Assessor of the Assessment District of Westminster County, and doubts have arisen as to the validity of such sales and grants;

AND WHEREAS it is expedient to validate all such conveyances as have heretofore been executed and delivered or executed or delivered before the expira-

tion of two years from the date of the sale for arrears of taxes as aforesaid, and all such sales and conveyances of lands situate in the former Assessment District of New Westminster as aforesaid."

13. The said Act purports to validate all conveyances of lands which were situate in the former Assessment District of New Westminster, and became comprised in the Assessment District of Vancouver County, and which were sold for arrears of taxes before the date of division aforesaid, executed by the Assessor for the Assessment District of Westminster County; and also to validate all sales for arrears of taxes of lands which were situate in the former Assessment District of New Westminster and became comprised in the Assessment District of Vancouver County.

14. The effect of this Act of 1917 is (a) to reverse and set aside the said judgment of the Supreme Court of Canada, and (b) to confiscate Your Petitioners' rights of property in the said lots.

15. The said Act (a) is unjust and contrary to sound principles of legislation; (b) confiscates private vested rights without providing for compensation, and is therefore an irreparable injustice; and (c) unduly interferes with private rights and property which has been held by the highest Court of last resort in the Dominion to belong to Your Petitioners.

YOUR PETITIONERS THEREFORE HUMBLY PRAY that the said 1917 Act be disallowed, for the reasons set out in this Petition.

AND YOUR PETITIONERS, as in duty bound, will ever pray.

Dated the 30th day of April, A.D. 1918.

JOHN HERON,
HUGH HERON, and
CHARLOTTE COLEMAN,
By their Solicitor,
J. F. SMELLIE.

NOTE: The Privy Council decided in *Wilson v. E. & N.R. Co.* 61 D.L.R. 1, in respect to the disallowance of Cap. 71 of 1917 that the language of Sec. 56 B.N.A. Act itself discloses with sufficient clearness an intention that, at all events as to private rights completely constituted and founded upon transactions entirely past and closed, the disallowance of a provincial statute shall be inoperative.

8 GEORGE V, 1918

(Approved 6 May, 1919)

DEPARTMENT OF JUSTICE, CANADA, OTTAWA, 3rd May, 1919.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has had under consideration the Statutes of the Legislature of the Province of British Columbia, passed in the eighth year of His Majesty's reign (1918), and received by the Secretary of State for Canada on the 14th day of May last, and he is of the opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, for the information of his Government.

Humbly submitted,
ARTHUR MEIGHEN,
Acting Minister of Justice.

9 GEORGE V, 1919

(Approved 10 April, 1920)

DEPARTMENT OF JUSTICE, OTTAWA, March 31st, 1920.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the legislature of British Columbia, passed in the ninth year of His Majesty's reign, 1919, and received by the Secretary of State for Canada on 12th April last, and he is of the opinion that these Acts may be left to such operation as they may have, subject to the following comments:—

Chapter 22, intituled "An Act to amend the Dolly Varden Mines Railway Act."

This Act upon the narrative that the Dolly Varden Mines Company was empowered by local statute, Chapter 53 of 8 George V, 1917, to construct, maintain and operate a railway from the Wolf Group of mineral claims to Alice Arm, provided the construction were completed before 31st December, 1918, that the railway had been only partially constructed; that the cost of construction had not been paid, and that it was expedient to provide for the payment and for an extension of time for completion, proceeds to enact that the real and personal property and rights described in the schedule of the Act, which appears to be intended to comprise all property, real and personal of the Dolly Varden Mines Company within the Province of British Columbia, shall be charged, in favour of the Taylor Engineering Company, Limited, with the actual cost of construction of the railway; that the cost shall be ascertained by one of the Justices of the Supreme Court of the Province nominated by the Provincial Minister of Railways; that within twenty-five days from the date of the judge's report the Dolly Varden Mines Company shall elect whether it will pay the Taylor Engineering Company the amount found; and that if the Mines Company within the twenty-five days aforesaid pay in full so much of the actual cost of construction as shall consist of wages; and within one month the full balance of the cost, the premises shall be disencumbered from the charge created by the Act, and that the time for completion of the railway shall be extended to 31st December, 1920. On the other hand it is provided that if within the times limited the Mines Company fail to pay, then at the expiration of a month from the date of the report the premises shall vest in and become the property of the Engineering Company with a like extension of time for the railway construction, subject however to certain enumerated charges, and that the full amount of the actual cost of construction so ascertained shall be paid, in the manner provided by the Act, by the latter Company to a trustee for the persons entitled; the Engineering Company moreover to satisfy the Minister of Railways of its ability to operate the property; all rights and privileges of the Engineering Company to cease if it fail to comply with these conditions. The net proceeds of the property in the hands of the Engineering Company are to be applied in the manner provided by the Act for payment of the statutory charges, and there is provision for enquiry for the purpose of ascertaining whether the premises are being operated with due regard to the liquidation of the charges, and if found necessary and just, for the appointment of a receiver. The second charge is concerned with a mortgage of George Wingfield, President of the Goldfield Mines Company, of the principal sum of \$150,000.00, and it is provided that after the expiration of eighteen months from the date when the premises shall become vested in the Engineering Company the said Wingfield shall be entitled to exercise the ordinary rights and powers of a mortgagee. The final charge to which the property is made subject in the event of its acquisition by the Engineering Company is a floating charge in favour of the Mines Company for the amount of its actual expenditure for the construction of the railway, purchase price and development of the premises, not to exceed \$613,000.00; and it provided that after satisfaction of the other charges the net

proceeds shall be devoted in equal moieties to the satisfaction of the contractors' profit, and of the said charge in favour of the Mines Company.

On 17th May last an application for disallowance was received on behalf of the said George Wingfield alleging that the Act contained provisions prejudicial to his interest, but it becomes unnecessary to consider this application, because it was about a month later withdrawn by Mr. Wingfield.

On 5th January last the undersigned received a telegram from Mr. R. T. Elliott of Vancouver requesting disallowance upon grounds alleging that the Act was *ultra vires* of the legislature. Correspondence ensued as follows:—

Telegram of 4th January, 1920, from Mr. R. T. Elliott, solicitor for the Mines Company to the Minister of Justice;

Letter of 7th January from the Deputy Minister of Justice to Mr. Elliott;

Two telegrams from Mr. Elliott to the undersigned of 15th January;

Letter of 16th January from the Deputy Minister of Justice to Mr. Elliott;

Telegram 16th January from the Sun Publishing Co., Ltd., of Vancouver to the Deputy Minister of Justice;

Mr. Newcombe's telegram in reply of 17th January;

Telegram 12th February from Mr. Elliott to the Minister of Justice;

Mr. Newcombe's acknowledgement of the same date;

Telegram of 12th February from R. J. Cromie of the Vancouver Sun to the Minister of the Interior;

Mr. Newcombe's reply of 14th February;

Telegram of 16th February from Mr. Elliott to the Minister of Justice;

Mr. Newcombe's reply of 17th February;

Telegram of 17th February from Mr. Cromie to Mr. Newcombe;

Letter 16th February from Mr. Elliott to the Minister of Justice, received 23rd February;

Letter 17th February from Mr. Elliott to the Minister of Justice, enclosing copy of the report of Mr. Justice Clement, who was named by the Provincial Minister of Railways under the provisions of the Statute to ascertain the actual cost of construction of the railway.

Copy of the above correspondence is submitted herewith.

On 2nd February the Deputy Minister of Justice wrote the Attorney General of British Columbia, enclosing for his consideration and any observations which he desired to submit for the information of the undersigned copies of the three telegrams which had then been received from Mr. Elliott; and he wrote the Attorney General again on 12th February, enclosing copy of another telegram from Mr. Elliott, received in the interval.

On 2nd March the Attorney General wrote the undersigned in reply, enclosing also copy of a memorandum prepared by the Taylor Engineering Company; copies of the Attorney General's letter and of the said memorandum are submitted herewith.

It will be perceived that the present application for disallowance submitted on behalf of the Mines Company is concerned solely with grounds alleging in emphatic terms the invalidity of the legislation for the reason that the enactment of it was incompetent to the local legislature, because it conflicts with the Dominion Winding-Up Act; relates to bankruptcy and insolvency; derogates from the authority of the Governor-in-Council to appoint the judges under Section 96 of the British North America Act, 1867, and is so far a complete nullity as to be incapable of having effect either inherently or by acquiescence or ratification.

On the other hand the Attorney General argues in effect that the statute is concerned merely with property or civil rights or private and local matters in the Province, and does not trench upon any Dominion power, and he maintains the authority of the legislature to name a commissioner for the purpose of ascertaining the cost

of construction of the railway, as provided by the Act. He points out that the occasion of the legislation was an application by the Mines Company for extension of its powers to construct the railway upon a public highway, these having reached their statutory limit, and that it was in the circumstances not only within the authority, but even the duty of the legislature to see that equitable provisions were made, and he submits that the court is the proper tribunal for determining Mr. Elliott's objections.

It appears from the memorandum submitted by the Taylor Engineering Company that the Mines Company as well as all other interested parties, was given full opportunity of hearing, and was duly heard before a select committee of the legislature appointed to investigate the dispute between the Dolly Varden Mines Company and the Taylor Engineering Company, Ltd., and that the Committee reported substantially in favour of the legislation which was thereupon after debate passed by the Legislative Assembly, as it is said unanimously.

It is represented by Mr. Elliott in his telegram of 15th January that "forcible possession has been taken of all the assets and properties of the Dolly Varden Mines Company, and valuable assets have been appropriated and converted into money and constant wastages of assets are occurring. The titles to the properties have been transferred to some nominal purchaser, and Taylor Company, Limited, is in hands of trustee for creditors. Under these circumstances it is respectfully submitted that to suggest the taking of legal proceedings by Dolly Varden Mines Company is to make a mockery of Justice," and he observes that the Company would be at a disadvantage in the litigation by reason of its resources having been taken out of its hands and appropriated to the adversary, from whom it is also suggested it would be impossible to recover damages or costs.

These considerations do not, however, in the opinion of the undersigned, justify the exercise of the power of disallowance upon any debatable question of legislative authority. It is manifest that if the statute be *ultra vires*, as is so unhesitatingly affirmed on behalf of the Mines Company, it could not legally operate to justify or bring about the condition of affairs of which the Company complains; because, upon the assumption that the Company's corporate capacity continues, it has the right to resort to the judicial tribunals which would afford a mandatory remedy against compulsory proceedings which have no legal sanction; and on the other hand, if the Company be in difficulties because of the expiry of statutory powers affecting its constitution, that is a condition not attributable to the Act under consideration.

In these circumstances the undersigned does not consider it necessary to express an opinion upon the questions of constitutional authority which the correspondence on behalf of the Mines Company suggests seeing that these questions are strongly maintained in the affirmative by the Attorney General on behalf of the local Government. He considers that the questions so involved in this application may, as intimated to the Company's solicitor by the Deputy Minister of Justice on 7th January last, be "more appropriately determined by the judicial tribunals than by the executive in the exercise of the power of disallowance."

There is however another aspect of the case not involved with any question of constitutional validity.

The Mines Company was incorporated by the authorities of the State of Delaware in the United States of America; it appears to have acquired certain mining property in the Province of British Columbia, and by local Act, Chapter 53 of 1917, the power to construct and operate a railway for use in connection with the operation of the mines; this property, or some of it, was acquired from Daniel W. Cameron and part only of the purchase price has been paid; the property had been mortgaged in favour of George Wingfield of the Goldfields Consolidated Mines Company and the mortgage was outstanding; the Mines Company had contracted with the Taylor Engineering Company for the construction of the railway; considerable work had been done under this contract, but, the Mines Company having failed in its obligations, the Engineer-

ing Company was unable to complete its contract; work was stopped, and by the provisions of the said Chapter 53 of 1917, the Mines Company not having its railway ready for operation before 31st December, 1918, its powers to construct and operate the railway became null and void. The Mines Company in these circumstances applied to the legislature for renewal and extension of its former powers. It was of course quite competent to the legislature to grant or to refuse this application; and, if granted, to impose reasonable conditions. The Act which resulted cannot however be regarded as an extension upon terms, consequent upon the application of the Mines Company, because, in the event of failure of the Mines Company to discharge within a limited time the obligations in connection with the construction of the railway, it is provided that the entire property of the Mines Company in the Province, including both its mines and the railway shall pass to the Taylor Engineering Company for the purposes provided by the Act. The situation as it stood when the Bill was under consideration by the legislature was one which could conveniently have been considered by the judicial tribunals, which had undoubted jurisdiction to declare the respective rights of the vendor, mortgagee and contractor, and to adjudge such remedies for recovering all the amounts payable by Mines Company as were justified by the facts and circumstances of the case. The legislature nevertheless put itself in the position of the competent court, and undertook to regulate the situation by way of a legislative measure. In the view of the undersigned this was an objectionable method of procedure, even if the power of the legislature be not questioned. The declaration of charges and directions for the realization of property for discharge of existing liabilities are effected by judicial proceedings constitutionally entrusted to the courts, and it is in the opinion of the undersigned not desirable that the legislature should assume the functions of a court of justice.

The undersigned finds it unnecessary however to determine whether the proceedings of the Assembly were justified, either by the special circumstances of the case or by the equity of the measure which it adopted. It is represented that not only the Engineering Company, but also Mr. Cameron, the vendor, and Mr. Wingfield, the mortgagee, are opposed to the disallowance of the Act. Moreover it was on 29th March, 1919, that the Act was assented to, and it was not until 4th January, last, that the undersigned received any intimation of complaint from the Mines Company. It is represented that in the interval steps had been taken under the provisions of the Act, and that the property of the Mines Company had been taken out of its hands and presumably interests have been acquired upon the foundation of the statute. It may be observed that a period of at least twenty-five days from the date of the judge's report was allowed for the Mines Company to elect whether it would pay to the Taylor Engineering Company the amount of the actual cost of construction, and so not only to retain its property, but also to acquire an extension of time for the construction of the railway, by providing for the discharge of its liabilities to the Engineering Company; and it would appear from the correspondence submitted that the amount has not been paid, although the cost of construction was ascertained and reported by consent so long ago as 22nd April last. In these circumstances the delay in submitting any objection suggests that the provisions of the statute may not at the time have been regarded as unsatisfactory, and in this connection it may be reiterated that the ground for disallowance which is prominently put forward is that of legislative incompetence. But, whatever may have been the reasons accounting for the delay of the Mines Company in submitting its complaint, the undersigned apprehends that, upon just and equitable principles, where a legislature adopts the extraordinary procedure of providing, in place of the judicial tribunals, for the administration of property in which various interests are concerned, or enacts provisions interfering with vested rights or existing obligations, a person desiring to object to the justice of the legislative measure should move with reasonable promptitude so as to avoid responsibility by delay or apparent acquiescence for any change of position in consequence of which disallowance might operate prejudicially to others, who,

although not the promoters of the Act, may be affected by its operation or by the proceedings authorized thereby, and the undersigned is not satisfied that in the present case disallowance might not create considerable confusion and produce loss, hardship or injustice not less than that which it might be designed to avoid or to remedy.

Chapter 32, intituled "An Act to provide for the Settlement of Differences between the Governments of the Dominion and the Province respecting Indian lands and Indian Affairs in the Province of British Columbia."

This Act, the nature of which is briefly described by its title, provides by Section 3 authority to the Lieutenant Governor in Council for the purpose of adjusting, readjusting or confirming the reduction, cut-offs and additions in respect of Indian reserves proposed in the report of the Commission, and to carry on such further negotiations and enter into such further agreements, whether with the Dominion Government or with the Indians, as may be found necessary, for a full and final adjustment of the differences between the said Governments.

Upon this the undersigned observes that Indians and Indian reserves are committed by Section 91 of the British North America Act to the exclusive legislative authority of the Dominion, and that if there be occasion for negotiations between the local authorities and the Indians with respect to reserves, these should be carried on through the Government of Canada, as representing the Indians, and not with the Indians directly, and that in so far as it be the intent of this section to authorize direct negotiations upon the subject between the Lieutenant Governor and the Indians the provincial legislature is in the opinion of the undersigned incompetent to sanction such proceedings. The undersigned apprehends however that it should not be presumed and probably was not the intention that the negotiations in question should be carried on with the Indians otherwise than through the Government of the Dominion with which their affairs are constitutionally charged.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

CHICAGO, ILL., Jan. 4th, 1920.

Hon. Minister of Justice,
Ottawa.

As solicitor for Dolly Varden Mines Company may I respectfully bring to your attention that the Dolly Varden Mines Railway Act Amendment Act 1919 passed by British Columbia Legislature is *ultra vires* owing to derogation from and conflict with provisions of Dominion Winding-Up Act. Dolly Varden Mines Company was trading company carrying on business in Canada within interpretation sections of Dominion Winding-Up Act. British Columbia Legislature proceeds to create statutory liability fix time for payment and provides for drastic bankruptcy and insolvency proceedings so as to compulsorily divest Dolly Varden Mines Company of all its assets, even preventing recovery of any surplus assets by the Company beyond specified portion without providing any machinery for recovery by Company of any surplus assets whatever in view undoubted breach of constitution of British Columbia Legislature and in view of fact that forcible possession has been taken of company's assets and continuous wastage is occurring may I respectfully urge that immediate action to nullify Act be brought about through Dominion Governmental action. May I respectfully refer you to Ontario versus Canada 1894 Appeal Cases 189 and Cushing versus Dupuy, 5 Appeal Cases 415. My address is Hotel Vancouver Annex at Vancouver, British Columbia. Am leaving Chicago for Vancouver to-day.

R. T. ELLIOTT.

DEPARTMENT OF JUSTICE, OTTAWA, 7th January, 1920.

SIR,—I have the honour to acknowledge your telegram of 4th instant with respect to the Dolly Varden Mines Railway Amendment Act 1919 of British Columbia, and suggesting that this should be disallowed as *ultra vires*.

I am to say that this matter will be duly considered, but I may remind you that in pursuance of the general course of practice questions such as you suggest would be more appropriately determined by the judicial tribunals than by the executive in the exercise of the power of disallowance.

I have the honour to be, Sir,

Your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

R. T. ELLIOTT, Esq.,
Attorney-at-Law,
Hotel Vancouver Annex,
Vancouver, B. C.

VANCOUVER, B.C., 15th Jan., 1920.

Minister of Justice,
Ottawa. Ont.

May I add to my prior telegrams this explanation why the Dolly Varden Railway Amendment Act 1919 was *ultra vires* the Legislature of British Columbia by reason of derogating from provisions of section 96 of British North-America Act paragraph while in questions directly between Crown in right of Province and a subject. The Provincial Legislature may have full power possibly extending even to confiscation when disputes arise between subject and subject it is the constitutional right of each party to such dispute to receive adjudication at hands of judge appointed by Dominion paragraph if any modification of this principle be allowed any Provincial Legislature can hear and determine any action or suit arising in Province completely usurping functions of judiciary precisely what happened in Dolly Varden case.

R. N. ELLIOTT.

VANCOUVER, B.C., 15th Jan., 1920.

Minister of Justice,
Ottawa. Ont.

SIR,—I have the honour to acknowledge the letter under date of 7th instant from the Deputy Minister of Justice with respect to the Dolly Varden Mines Railway Amendment Act 1919 of British Columbia paragraph in so far as regards the reminder that under ordinary circumstances the matters at issue "would be more appropriately determined by the Judicial tribunals than by the executive". May I respectfully point out that the circumstances surrounding the enactment under consideration are altogether extraordinary paragraph in the first place the enactment taken as a whole constitutes bankruptcy and insolvency legislation beyond any shadow of doubt or possibility of argument no other purpose or object can be read into any of its provisions than a purpose and object to make a complete compulsory disposition of all the assets and properties real and personal of the Dolly Varden Mines Co. in the Province of British Columbia paragraph. In the second place the administration of the assets and properties is entrusted to the Taylor Engineering Co., Limited and the resulting beneficially estate and interest after payment off of obligations created by statute is vested in Taylor Engineering Co., Limited instead of reverting to the real

owners Dolly Varden Mines Company paragraph. In the third place pursuant to the enactment forcible possession has been taken of all the assets and properties of the Dolly Varden Mines Co. and valuable assets have been appropriated and converted into money and constant wastages of assets are occurring the titles to the properties have been transferred to some nominal purchaser and Taylor Engineering Co., Limited is in hands of trustee for creditors paragraph. Under these circumstances it is respectfully submitted that to suggest the taking of legal proceedings by Dolly Varden Mines Co. is to make a mockery of Justice. The Company's opponents would fight the company with moneys obtained from unlawful conversion of company's own assets and when litigation resulted successfully in theory the fact would be that company could only recover its own properties together with any remaining remnants of its convertible assets and with right to cover damages and costs from a nebulous legal entity without any financial standing or existence paragraph. Without any disposition whatever to indulge in heroics may I respectfully point out to you that breach of constitution is absolutely clear that our right to evoke the nearest and strongest avenue of relief is assured to us by extraordinary conditions above set forth and to prevent further wastage and conversion of assets and that to leave us to result of litigation is to deny us justice as only possible fund for conduct of litigation would be our own assets. In conclusion may I respectfully urge upon your consideration the fact that there must be on your office some positive duty to uphold and protect the constitution of Canada and to prevent despoilment of victims under illegal forces of *ultra vires* legislation.

R. T. ELLIOTT,

Solicitor for Dolly Varden Mines Company.

16th January, 1920.

SIR:—I have the honour to acknowledge your two telegrams of 15th instant, making further representations in support of the application for disallowance of the Dolly Varden Mines Railway Amendment Act 1919 of British Columbia, and am to inform you that this will receive due consideration.

I have the honour to be, Sir,

Your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

R. T. ELLIOTT, Esq., K.C.,
Vancouver, B.C.

VANCOUVER, B.C., Jan. 16, 1920.

E. L. NEWCOMBE, Deputy Minister of Justice,
Ottawa, Ont.

Account of great big interest in Dolly Varden disallowal applications we would appreciate very much securing documents between R. T. Elliott, K.C., and your department for publication, but Mr. Elliott will not release these without your consent stop as grounds for disallowal application are constitutional and of public interest will you be good enough to wire us or Mr. Elliott authorizing release.

SUN PUBLISHING CO., LTD.

(Telegram)

17th January, 1920.

Sun Publishing Co., Ltd.,
Vancouver, B.C.

No objection to publication Dolly Varden correspondence if Elliott so desires.
E. L. NEWCOMBE.

12th February, 1920.

SIR:—

Re Dolly Varden Mines Railway Act Amendment Act.

I have the honour to acknowledge your telegram of 12th instant, which will receive consideration in connection with your previous messages. I may say that copy of these has been communicated to the Attorney General of British Columbia and the Minister is awaiting his reply.

I have the honour to be, Sir,

Your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

R. T. ELLIOTT, Esq., K.C.,
Vancouver, B.C.

VANCOUVER, Feb. 12th 1920.

Hon. ARTHUR MEIGHEN,
Ottawa.

Anticipating possible disallowance by Ottawa, Taylor Company announce intention placing mortgage on Dolly Varden property to pay off all charges under *ultra vires* act. Understand Mr. Elliott has sent strong message Minister Justice summarizing constitutional points and urging immediate disallowance. Would consider it favour if you would personally ask Justice Department status of matter and how soon they expect decision. Kindly answer.

R. J. CROMIE.

14 February, 1920.

R. J. CROMIE, Esq.,
Vancouver, B.C.

Dolly Varden mines. Your telegram twelfth to Mr. Meighen. Minister is awaiting report from Attorney General at Victoria before reporting upon Mr. Elliott's application for disallowance. Attorney General has been asked to expedite but do not encourage anticipation of disallowance as judicial remedies are available.

E. L. NEWCOMBE.

VANCOUVER, B.C., Feb. 16.

Hon. Minister of Justice,
Ottawa.

May I supplement my communications to your Department respecting British Columbia Doly Varden Mines Railway Act by referring shortly to alleged acquiescence or ratification paragraph. Rule states Halsburys Laws of England Volume one para-

graph three seven nine as follows an Act may be void in its inception and therefore not capable of ratification because it is one which the intended principal had not the power to do paragraph. Lord Chelmsford in Riche Case Law Reports Seven House of Lords page six seven nine said it is exactly in the same condition as if no contract at all had been made and therefore ratification of it is not possible paragraph. Several other authorities cited Halsbury of which two fully establish existence above principle see Exchange Banking Company twenty one Chancery Division 519 Mann versus Edinburgh 1893 Appeal Cases 69 also proposition 23 Lefroys Legislative Power page 300 paragraph. Reason above principle necessarily applies invalid proceedings Provincial Legislature is conclusive of law stated by Taschereau in Lenoir versus Ritchie three Supreme Court Canada Reports 624 namely Provincial Statute passed on matter over which Legislature has no authority or control under British North America Act is complete nullity no power can give it validity paragraph. These expressions necessarily exclude any power or effect of acquiescence or ratification.

R. T. ELLIOTT.

17th February, 1920.

Re Dolly Varden Mines Railway Act.

DEAR SIR:—I beg to acknowledge your telegram of 16th instant and may say that the same will receive due consideration.

Yours truly,

E. L. NEWCOMBE,
Deputy Minister of Justice.

R. T. ELLIOTT, Esq., K.C.,
Hotel Vancouver,
Vancouver, B.C.

VANCOUVER, B.C., Feb. 17.

E. L. NEWCOMBE,
Deputy Minister of Justice,
Ottawa.

Thanks your wire Public requires no anticipation of disallowance but knows that high reputation of Canadas Justice Department and yourself can be relied on to definitely deal with a constitutional question which appears so elementary that is in a dispute between a foreign mining company and a local contracting company in British Columbia Legislature assumes the right to step in constitute itself into a regular court and say to the Mining Company we will give you thirty days to pay so much money to the contractors if you do not do this we will take your mine away from you and give it to the contracting company stop Either the Provincial Legislature has orders not the constitutional authority to act in such matters and the public awaits your definite decision one way or the other because after permitting the Legislature to disregard the courts and take the Mining Companys entire assets away from them it would seem beyond reasonable justice to then refer the unfortunate Mining Company to the court without first restoring to them the possession of their property every mining and industrial company here particularly those having foreign capital are vitally interested because as they have expressed themselves publicly and through the press what show have they got for their money if after investing in British Columbia they get into a dispute with some local company who in place of applying in the regular way to the courts appeals direct to the Legislature and is granted relief This in a general way is how the public

regard the proposition and is the reason why your Department should disallow or answer for publication grounds upon which Mr. Elliott has requested disallowal I have tried to make the matter plain as I take it from your wire you wish general information. Kindly keep me posted.

R. J. CROMIE,
Publisher Vancouver Daily Sun.

VANCOUVER, B.C., 16th February, 1920.

The Honourable,
The Minister of Justice,
Ottawa, Ont.

Re Dolly Varden Mines Railway Amendment Act, 1919.

SIR.—May I supplement my communications to your Department respecting the above British Columbia Legislative proceeding, by dealing shortly with the matter of alleged ratification.

The rule is stated in Halsbury's Laws of England, Volume 1, Paragraph 379, as follows:—

“An Act may be void in its inception, and therefore not capable of ratification, because it is one which the intended principal had not the power to do.”

Several authorities are cited, out of which I would direct your attention to two cases as fully establishing the existence and application of the above principle: See *In re Exchange Banking Company* (1882) 21 Chancery Division 519; and *Mann and Beattie vs. Edinburgh Northern Tramways Company* (1893) Appeal Cases 69. See also Proposition No. 23, Lefroy's Legislative Power in Canada at page 300.

The reason why the above principle necessarily applies to invalid proceedings of a Provincial Legislature is the conclusion of law stated by Mr. Justice Taschereau in the case of *Lenoir vs. Ritchie*, (1879) 3 Supreme Court of Canada Reports at pages 624 and 625:—

“A Provincial Statute passed on a matter over which the Legislature has no authority or control, under the British North America Act, is a complete nullity; a nullity of non esse.—Defectus potestatus, nullitas nullitatum. No power can give it vitality.”

The expression used by the learned Judge “No power can give it vitality” of necessity excludes any power of ratification—if any other construction were possible, any two parties desiring to transfer Federal Powers to a Provincial Legislature would simply procure Provincial Legislation at the instance of one such party, and bring it into effect by ratification on the part of the other of such parties. The illegality and impossibility of such a course requires no argument.

I have the honour to be, sir,

Yours obediently,

R. T. ELLIOTT.

The Honourable,
The Minister of Justice,
Ottawa, Ont.

VANCOUVER, February 17th, 1920.

SIR.—I have the honour to attach a copy of Report of the Honourable Mr. Justice Clement under the Dolly Varden Mines Railway Amendment Act, 1919.

This report shows that Mr. Justice Clement, under a Provincial Appointment, sat and acted as a Judge of a Superior Court of Record in derogation from and of Section 96 of the B.N.A. Act.

No appeal is possible in respect of this proceeding, and the only remedy available for interests adversely affected is disallowance.

I have the honour to be, sir,

Yours respectfully,

R. T. ELLIOTT.

VICTORIA, 2nd March, 1920.

Hon. CHARLES J. DOHERTY, K.C.,
Minister of Justice,
Ottawa, Canada.

DEAR SIR,—

Re the Dolly Varden Mines Railway Act Amendment Act, 1919:

I have the honour to acknowledge receipt of your letter of the 12th February, 1920, enclosing communications from the Dolly Varden Mines Company relative to an application to disallow the Dolly Varden Mines Railway Act Amendment Act, 1919. I have requested the Taylor Engineering Company to prepare a memorandum setting out its side of the matter, which has been done, and I am forwarding the memorandum to you.

With reference to the contentions put forward in support of the application: The first of these contentions is that the legislation embodied in the Act trenches upon the sphere of bankruptcy and insolvency. I am unable to accept this contention, which seems to be untenable on two grounds, one of fact and one of law.

On the ground of fact, there would appear to have been no question as to the ability of the Dolly Varden Mines Company to pay its debts, and the legislation is based not on the inability but the unwillingness of the Company to equitably meet its just obligations.

As to the ground of law, I understand the distinctive mark of legislation relating to bankruptcy or insolvency to be that it effects a complete change in the status of the individual or company submitted to its provisions; an adjudication of bankruptcy or a winding-up order resembling in this respect a judgment in rem. After such an adjudication or order the legal persona of the individual in the one case, and the corporate status of the company in the other, were annihilated; and a fresh entity in the view of the law emerged from the process.

This profound effect on status and its compulsory character seemed to me to be essential characteristics of legislation relating to bankruptcy or insolvency, and both seem to be conspicuously absent from the legislation contained in this Act.

No alteration in status is effected by the Act, and the corporate state and the corporate powers of the Dolly Varden Mines Company remain intact as they existed on the day when the Company became domiciled in this Province.

No compulsion was sought to be or was effected. A free choice was offered to the Dolly Varden Mines Company whether it would itself pay its debts or whether those debts should be paid in invitum. The Execution Acts and process of execution rest on the same principle.

The second contention of the Dolly Varden Mines Company is not very intelligible to me, viz., that which suggests some infringement of Section 96 of the British North America Act.

I do not think a contention sustainable which denies the power of the Legislative Assembly to act through its organ, a Special Committee, and I do not very well understand how the Legislative Assembly could have refused to appoint a Special Committee when requested to do so by the petition of the Dolly Varden Mines Company, since the duty of inquiring into and redressing grievances is surely one of the foremost, as it is the oldest of the functions of a Legislature.

In my opinion, there is no justification for the disallowance of this Act, and, if done, will constitute a serious interference with Provincial rights.

The Dolly Varden Company was granted a charter by the Legislature in 1917 giving them the right to construct a railway on a public highway, and the charter required that the road be completed within a specified limit of time. This was not done, and they were petitioners to the Legislature in 1919 for an extension and renewal of franchise rights. The Provincial Parliament, in its legislation, was not only within its competence dealing with property and civil rights, but was peculiarly concerned with a matter requiring an equitable adjustment between all parties affected by the privileges extended by the Legislature in 1917, and the honour of the Legislature and its responsibility to its citizens demanded action.

I wish to quote with emphasis the remarks of Sir Oliver Mowat stated in Lefroy's Legislative powers in Canada at page 201:—

“I repudiate the notion of the Petitioners that it is the office of the Dominion Government to sit in judgment on the right and justice of an Act of the Legislature relating to property and civil rights. That is a question for the exclusive judgment of the *Provincial Legislature*.”

So far as it is suggested this legislation is ultra vires the Court is the proper tribunal for determining such a question.

Upon other grounds it is submitted that as to matters within the competence of the Legislature and which do not affect or interfere with federal interests or policy, Provincial legislation should not be interfered with, nor should the Province be called upon to show cause as if the Federal Government were an exalted institution sitting in judgment on the Provincial Legislature.

Yours truly,

J. W. de B. FARRIS,
Attorney-General.

MEMORANDUM

In the Matter of the Dolly Varden Mines Railway Act Amendment Act, 1919.

This matter commences with the passage of the “Dolly Varden Mines Railway Act,” being Chapter 53 of the Statutes of British Columbia of 1917.

Under this Act, the Dolly Varden Mines Company (hereinafter called the “Mines Company”), which had procured from the Crown certain grants of mineral claims in the Cassiar District of British Columbia, was empowered by the Legislature to build a light railway upon the public highway, from tide water to the mineral claims in question, which consisted of two groups, known as the “Dolly Varden” and the “Wolf.”

In order to avail itself of the concession obtained from the Legislature, the Mines Company engaged the Taylor Engineering Company Limited (hereinafter called the “Engineering Company”) to commence the construction of the railway, and the work progressed to some extent in the summer and early autumn of 1917.

Owing to the extremely difficult nature of the construction, the work, which was under the supervision and control of the Mines Company's Engineer, Mr. McGinnis, cost more than was anticipated, and in view of the representations made by Mr. Hubbard, the President of the Mines Company, that the shareholders of the Mines Company were disappointed at the increased cost, the Engineering Company accepted a sum somewhat more than twenty thousand dollars (\$20,000.00) less than the amount to which it was entitled, which deduction practically swallowed up the whole of the contractor's profit to which the Engineering Company was entitled, so that the Engineering Company had built so much of the railway as was completed in 1917 for nothing.

In 1918, Mr. Hubbard was, through Mr. Taylor of the Engineering Company brought into touch with the Granby Consolidated Mining, Smelting and Power Company, Limited, which Mr. Taylor suggested as a possible purchaser, and Mr. Hubbard proceeded to negotiate with the Granby Consolidated Mining, Smelting and Power Company for the sale to it of the properties of the Mines Companies.

Mr. Hubbard appreciated the importance of completing the construction of the railway, which would not only assist him in his negotiations with the Granby Company, but would also enable the Mines Company to make its investment productive by the shipment of ore if the negotiations with the Granby Company fell through. Accordingly, Mr. Hubbard wrote to the Engineering Company a letter bearing date the 14th of May, 1918, and on the faith of this letter, the Engineering Company recommenced the construction of the railway in the spring or early summer of 1918.

The Engineering Company had no great financial resources and it was understood that Mr. Hubbard would provide financial relief to the Engineering Company at latest by the beginning of July.

The Engineering Company sank all its available money in the prosecution of the work, but Mr. Hubbard failed to supply the necessary money, although he was profuse in supplying promises to do so.

The Engineering Company repeatedly during the summer of 1918 attempted to obtain from Mr. Hubbard the money necessary to carry on the construction and repeatedly threatened to suspend construction unless the money was forthcoming, but Mr. Hubbard, as appears from his cross-examination, lured the Engineering Company further and further along the road of destruction, so that, after sinking all its money in the construction, the Engineering Company went on to pledge its credit to such an extent that it eventually found itself in debt to the amount of \$462,628.28 by reason of the construction of this railway.

Having thus engineered the Engineering Company into this condition, Mr. Hubbard then proposed to the Engineering Company that it should pay him a heavy commission for getting it out of this entanglement, and when this suggestion was not accepted, broke off negotiations with the Granby Company, and then on behalf of the Mines Company asserted that the latter was under no obligation to pay for the cost of construction.

By the Dolly Varden Mines Railway Act (S.B.C. 1917, C. 53), the Mines Company was bound to complete the railway before the 31st of December, 1918, in default of which the rights and privileges conferred by the Act became null and void.

The railway was not completed before the 31st of December, 1918, and the Mines Company found itself under the necessity of applying to the Legislature of this Province to re-grant the privileges which had lapsed and for this purpose the Mines Company presented a petition dated the 7th of February, 1919, to the Legislative Assembly of British Columbia, praying that a bill might be introduced and passed which should in appropriate terms extend the time within which the Mines Company might complete the construction of the railway, and reviving the rights and privileges conferred by the Dolly Varden Mines Railway Act.

The Engineering Company had presented a petition to the Legislative Assembly asking for an inquiry into the way in which the Mines Company had exercised the rights and privileges conferred on it by the Dolly Varden Mines Railway Act, and praying that provision might be made for the payment of the cost of construction of the railway which the Mines Company had been permitted to construct upon a public highway of the Province.

Upon the joint request of the Mines Company and the Engineering Company a special committee of the Legislative Assembly was appointed to inquire into the merits of the petitions which had been presented to the Legislative Assembly by the Mines Company and the Engineering Company respectively.

Both the Mines Company and the Engineering Company submitted to the jurisdiction of this special committee and appeared by counsel before the committee, the En-

gineering Company being represented by Mr. Mayers of the British Columbia Bar, and the Mines Company being represented by Mr. Hammell of the Bar of Chicago and by Mr. Patmore of the Bar of British Columbia.

The Committee held a large number of sittings extending from the 12th of February, 1919, to the 21st of February, 1919, in the course of which the Committee heard evidence adduced by both parties covering some 1,800 folios, in addition to a large amount of documentary evidence which was put in by both parties.

Meanwhile the Mines Company had given an option to purchase to the Temiskaming Mining Company, Limited, under date of the 19th day of December, 1918, the terms of which were distinctly unfavourable to the Mines Company, the most important of which are as follows:—

No liability was imposed on the Temiskaming Company at all; there was no covenant by that Company to pay anything to the Mines Company and any payments to the Mines Company were to come out of the net proceeds of the operations of the mines and the Temiskaming Company did not even bind itself to work the mines or to continue working them if operations should have started, and furthermore, the Temiskaming Company was to be at liberty to cease operations for a period of two years without incurring any risk of having the option cancelled. The Temiskaming Company only undertook to pay off the existing mortgage to Mr. George Wingfield of the Goldfields Consolidated Company and any claims in respect of the railway which were necessary to be paid in order to obtain the extension of the charter, such sums not to exceed the amount of \$150,000.00. Any payments so made by the Temiskaming Company were to be secured by a mortgage on the whole property and were to be extinguished out of the first proceeds of the mines. These net proceeds were defined to mean the proceeds of the mines after deduction of all operating expenses and all expenses of development up to the amount of \$1.50 for each ton of ore mined. After the extinguishment of the two amounts paid in respect of the Goldfields Consolidated Company's mortgage and the claims for wages due in respect of the construction of the railway and of a further sum of \$25,000.00 as a douceur to Mr. Hubbard, the balance of the net proceeds after a further deduction of any sum in excess of \$50,000.00 necessary for the completion of the railway was to be paid to the Mines Company up to an amount of \$900,000.00.

The agreement contained the other significant provision that any sums in excess of the wages claims which had to be paid to obtain an extension of the charter were to be deducted from the amount which would eventually become payable to the Mines Company, thereby showing clearly that both the Mines Company and the Temiskaming Company recognized the existence of a further heavy liability in regard to the construction of the railway.

If, therefore, the cost of construction of the railway were paid, the Mines Company might eventually have become entitled under its option to something in the neighbourhood of \$230,000.00.

After the hearing before the special committee had been concluded, the Temiskaming Mining Company appeared upon the scene in the person of Mr. Faskin, of the firm of Faskin, Robertson, Chadwick and Sedgwick, of Toronto, who petitioned the Legislature that the matter might be reopened for the purpose of allowing him to present argument on behalf of the Temiskaming Mining Company.

The matter was thereupon referred back to the special committee and at a special sitting, Mr. Hammell was again heard by the special committee, as well as Mr. Faskin on behalf of the Temiskaming Company.

Thereafter the special committee presented its recommendations to the Legislative Assembly, recommending that upon the petition of the Mines Company and the petition of the Engineering Company an Act should be introduced in the terms of what afterwards became the Dolly Varden Mines Railway Act Amendment, 1919.

Following upon the presentation of the report of the special committee, a debate ensued in the Assembly, and after the close of the debate the Dolly Varden Mines

Railway Act Amendment Act, 1919, was passed unanimously with the support of all three parties of which the Legislative Assembly consisted.

Not a dissentient voice was raised, and throughout the debate the proposed act was treated as a pure measure of justice to citizens of this Province who had devoted their time, energy and financial resources to the development of the natural resources of this Province which had been entrusted to the Mines Company for the purpose of the exploitation of its natural resources and not for the purpose of the exploitation of the inhabitants of this Province.

Having thus invoked the jurisdiction of the Legislative Assembly of this Province and submitted to it the differences and disputes which had arisen with the Engineering Company the Mines Company went even further and submitted itself to the jurisdiction of the Justice of the Supreme Court who was appointed under Section 3 of the Dolly Varden Mines Railway Act Amendment Act, 1919, to ascertain the actual cost of construction of the railway.

The Justice in question was the Honourable Mr. Justice Clement, and consequent upon his appointment, the Solicitor for the Engineering Company wrote to the Solicitor for the Mines Company under date of the 29th of March, 1919, in performance of a promise made to the Mines Company at the time of the passage of the Act and suggesting mutual admissions as to the cost of construction and the actual expenditures made by the Mines Company to which letter the solicitor of the Mines Company replied under date of the 17th of April, 1919.

The promise referred to was that the actual expenditures made by the Mines Company should include a number of items, and had reference to Section 10 of the Dolly Varden Mines Railway Act Amendment Act, 1919, which defined the actual expenditure made by the Mines Company which was created a charge upon the property.

The suggestion as to mutual admissions made by the Engineering Company and accepted by the Mines Company related to the function of the Justice appointed and the suggestion consisted in an offer that the Engineering Company should admit that the Mines Company had actually expended \$613,000.00 in the development of the mines if the Mines Company would admit the fact that the actual cost of construction of the railway amounted to \$462,628.28.

This suggestion was accepted by the Mines Company as appears from the letter of the 17th of April, 1919, and the Mines Company authorized the Engineering Company to appear before Mr. Justice Clement and admit the figures as above set forth.

The Mines Company thus solicited the intervention of the Legislative Assembly, submitted to the jurisdiction of the Special Committee, stipulated for an advantage in the Act itself, and took part in the working out of the scheme provided by the Act.

The assertion that the Act has anything in common with legislation upon bankruptcy and insolvency is as wild as the imaginings invented by the late Mr. de Quincey although if it were true there might be difficulty in showing why the Legislative Assembly of this Province would not have jurisdiction to pass legislation relating to insolvency when no one has ever, since the case of Cushing vs. Dupuy, ventured to impugn the competence of a Provincial Legislature to enact legislation of the kind exemplified in the Assignment for the Benefit of Creditors Act.

No question of insolvency was concerned here, however, and no one ventured to suggest that the Mines Company was not able to pay its debts although no doubt there was excessive unwillingness on the part of the Mines Company to do so.

These assets were very far from inconsiderable and it is hoped that under the honest management of the Engineering Company, the assets will be sufficient for the discharge of all the obligations incurred by the Mines Company.

The scheme of the Act was purely equitable and one underlying idea runs through the whole work, namely, to provide that the natural resources of this Province should not be diverted to base uses by foreign adventurers who might desire to use the work

and the money of the inhabitants of this Province for their own purposes of enrichment, without making any return therefor.

In accordance with this fundamental plan, the Dolly Varden Mines Railway Act Amendment Act, provided for the ascertainment of the actual cost of construction of the railway, and for payment of that amount by the Mines Company within a limited time in default of which the natural resources which had been entrusted to the Mines Company were to pass to the Engineering Company in order that the latter might develop and work these resources and from the proceeds pay off the obligations which had been laid upon them by the Mines Company.

Provision was accordingly made for payment of a sum due to a Mr. Cameron who was the vendor to the Mines Company of the "Wolf" group, for the payment and discharge of the mortgage to Mr. Wingfield of the Goldfields Consolidated Company, for the payment of the claims of the wage-earners who had constructed the railway and of the merchants who had supplied the material for the construction. Thereafter the proceeds were to be devoted to the payment of the Contractors' profit *pari passu* with the Mines Company.

Under this plan, the Mines Company which would have received some \$230,000.00 under the option made by itself was given a charge upon the property to the extent of \$613,000 so that by the Act of which it now complains, the Mines Company profited to the extent of some \$400,000.00.

The Act became law on the 29th of March, 1919, and on the 17th of May, 1919, Messrs. Faskin, Robertson, Chadwick & Sedgwick communicated by letter with the Honourable the Minister of Justice affirming themselves to be instructed by Mr. George Wingfield of the Goldfields Consolidated Company to petition for the disallowance of the Act.

As soon as this came to the knowledge of the Engineering Company, it communicated with the officials of the Goldfields Consolidated Company and Mr. Julien, the representative of Mr. Wingfield (and also an official of the Goldfields Consolidated Company) promptly repudiated the alleged authority of Messrs. Faskin, Robertson, Chadwick & Sedgwick.

The attention of the Minister of Justice was drawn to this fact by a letter from the Solicitor of the Engineering Company dated the 2nd of June, 1919, and the plot failed.

The Engineering Company upon the failure of the Mines Company to pay its debts, proceeded to carry out the prescriptions of the Act, paid the wages of the labourers engaged in the construction of the railway, amounting to some \$150,000.00 and set to work upon the development and operation of the mines with the result that the time is approaching when the obligations incurred by the Mines Company and imposed as charges upon the property by the Act will be materially reduced and eventually, it is hoped, wiped out.

Under the management of the Mines Company, matters had come to such a pass that the Mines Company was willing to sacrifice its interest for the possibility of obtaining at some remote time the sum of \$230,000 from the Temiskaming Mining Company, but now, when the complexion of affairs is altered by the efforts and management of the Engineering Company, the Mines Company seeks to re-assume the stewardship of these natural resources which it formerly abused.

The suggestion of Mr. Elliott, who asserts himself to be acting for the Mines Company, attacking the nature of the legislation as savouring of legislation relating to bankruptcy and insolvency has already been dealt with. His reference to the assurance fund would appear to be clearly wild as no indefeasible titles have been issued to the Engineering Company.

While mistakes of law, however gross, are of course always pardonable, different considerations apply to deliberate mis-statements of fact, and the charge of fraud launched by Mr. Elliott in his telegram to the Honourable the Prime Minister of this province of the 13th of January last would seem to be wholly unfounded and to reflect discreditably upon the cause which is striving to avail itself of such weapons;

correspondence relative to this matter is submitted among the exhibits to this memorandum.

One of the earliest and certainly the most beneficial functions of a British Legislature is to redress all grievances, and one would not wish to believe that the British North America Act had deprived Provincial Legislatures of this beneficent power which constitutes, one would think, one of the main objects of the existence of Legislatures and one's attention is struck by the audacity of an attempt to induce the Executive Government of the Dominion to destroy a great Act of justice deliberately enacted by a Legislative Assembly as the unanimous decision of all conflicting parties within that Assembly.

There is submitted herewith the following correspondence:—

1. A copy of the letter from J. D. Hubbard to the Taylor Engineering Company of the 14th of May, 1918.

2. A copy of the contract between the Dolly Varden Mines Company and the Temiskaming Mining Co. of the 19th of December, 1918.

3. A copy of the letter from the solicitor of the Taylor Engineering Company Ltd. to the solicitor of the Dolly Varden Mines Company dated the 29th of March, 1919.

4. A copy of the letter from the solicitor of the Dolly Varden Mines Company to the solicitor of the Taylor Engineering Company, dated the 17th of April, 1919.

5. A copy of the letter from the solicitor of the Taylor Engineering Company to Mr. R. T. Elliott, of the 14th of January, 1920.

6. A copy of the letter from Mr. R. T. Elliott to the solicitor of the Taylor Engineering Co. Ltd. of the 15th of January, 1920.

7. A copy of the letter from the solicitor of the Taylor Engineering Company to Mr. R. T. Elliott of the 17th of January, 1920.

8. Report of the Special Committee.

Attention is drawn to the following findings of fact by the Special Committee:—

1. That the president of the Mines Company assured Mr. Taylor of the Engineering Company that the construction of the railway would be fully paid for in the event of a sale to the Granby Company and further assured Mr. Taylor that in case of no sale to the Granby Company, the Engineering Company would be paid to the full extent of all its just claims and receive a proper reward for its services as engineer and contractor out of any subsequent disposition of the mines, provided only that the work should be done to the satisfaction of the engineers of the Mines Company.

2. That it was in reliance upon the undertaking given by the president of the Mines Company that the Engineering Company resumed work on the construction of the railway in 1918.

3. That the work was done under the supervision of the resident engineer for the Mines Company.

4. That the work was carried on in 1918, upon the capital and credit of the Engineering Company.

5. That by August 19, 1918, the president of the Mines Company knew that the Engineering Company had committed itself financially so far that it could not stop construction without ruin.

6. That on the 12th of October, 1918, the directors of the Mines Company refused to accept the offer to purchase made by the Granby Company.

7. That Mr. Taylor of the Engineering Company introduced the Temiskaming Mining Company as a prospective purchaser and endeavoured to effect a sale at a price of \$1,100,000, giving his services as an agent without any charge.

8. That after Mr. Taylor's efforts, the president of the Mines Company and Mr. Errington, representing the Temiskaming Mining Company had

arranged a prospective sale on the terms of the contract of the 19th of December, 1918, subject to a commission of \$50,000 which was to be divided between the president and Mr. Errington:

9. That the consummation of this sale was to be conditional upon the renewal of the charter for the railway.

10. That the resident engineer of the Mines Company had reported to the president that the construction work had been well done throughout.

11. That according to the evidence of the Government engineers of the Railway Department the railway was not extravagantly built, and that had it been less well built, they would not have taken the responsibility of issuing to the Mines Company a certificate of permission to commence operations.

The committee then proceeded to sum up its findings as follows:—

“Your committee, therefore, being satisfied on the evidence that the work was properly performed and that the Taylor Engineering Company resumed operations in 1918 on the promises made in the letter of May 14 by Mr. J. D. Hubbard, president of the Dolly Varden Mines Company, that the Taylor Engineering Company would be paid fully for its just claims, either from a sale to the Granby Company or ‘sale to others,’ feels that the Taylor Engineering Company is entitled to be paid in full for its ‘just claims . . . for work done and materials furnished’ to ‘include not only a reimbursement but proper compensation for engineering and contractors’ profits’ to adopt the language used by the president of the Dolly Varden Mines Company in his letter to the Taylor Engineering Company.”

Such were the findings of fact and such was the verdict of the tribunal to which the Dolly Varden Mines Company, a domiciled subject of this province, had spontaneously submitted its differences with the Engineering Company.

VANCOUVER, B.C., May 14th, 1918.

The Taylor Eng. Co. Ltd.,
Vancouver, B.C.

GENTLEMEN,—I understand that you have proposed to Mr. Sylvester, of the Granby Company, that the Taylor Engineering Company should resume construction of the Dolly Varden Railroad and carry it on pending the examination of the Dolly Varden properties by the Granby Company; that if the Granby Company should elect to exercise its option and purchase the Dolly Varden properties, the Granby Company would reimburse the Taylor Engineering Company for the outlay and make satisfactory arrangements with you for the completion of the road. I understand that Mr. Sylvester has indicated a willingness to accept your offer.

We are not concerned with any arrangement you may make with Mr. Sylvester in regard to the matter, provided the Granby Co. does ultimately take the properties over; but in case they should not do so, it is obvious that your relations with the present owners of the property would become important and would require serious consideration.

You are already fully informed of the limitations and conditions affecting the ownership and the policy of the owners at this time, and this knowledge will enable you to readily understand the position which I am compelled to take.

The owners cannot and will not assume any liability whatsoever at this time. They will recognize neither a financial nor a moral responsibility to reimburse you, or to compensate you for this work in case the Granby Company does not buy the properties. They cannot and will not permit the properties to become subject to any lien for material, labour or other charges. If the Taylor Engineering Company undertakes this work it will be necessary to have from them an instrument releasing

the present owners from any financial or moral responsibility in the matter, and expressly waiving lien rights and protecting the property against such rights, not only as to the Taylor Engineering Company, but as to sub-contractors and material men.

As against this, you can rely upon the following facts and assurances: If the Granby Company should not exercise its option to take over the properties, it is obvious that the present owners will either have to reorganize, complete the railway, and operate the properties themselves, or dispose of them to some purchaser other than the Granby Company. In either event, and subject to the limitations stated below, I will personally assure you that any just claims you might have for the work done and materials furnished will be recognized and provided for either in case of reorganization or sale to others. Compensation for such claims would include not only a reimbursement, but proper compensation for engineering and contractor's profits. This assurance, however, presupposes that all work shall be done to the satisfaction of the owners, and will have to be approved by their Engineers, who would be the sole judges as to whether and how far the work would be acceptable.

You may safely assume that the Dolly Varden properties with the Railway constitute an asset of sufficient value to justify the assumption that any just claim you might have could and would be taken care of in the final "work-out" of the proposition and in any event. A final payment of \$25,000 is due on October 1st next on the Wolf claims, and the Goldfield Consolidated Mines Company loaned \$150,000 at 6 per cent, which is due January 1st, 1919, and for which the Goldfield Consolidated Company is entitled to a mortgage. This mortgage has not yet been recorded and its final form is yet to be agreed upon. I cannot personally guarantee it, but I have no doubt the payment on the Wolf claims will be made when due. In spite of the statement, the owners will not and cannot consider any arrangement which might create a lien upon the property, in case of foreclosure of the Goldfield mortgage, and failure to redeem by the present owners, arrangements could and would be made whereby you could redeem from such foreclosure.

Yours truly,

"J. D. HUBBARD."

MEMORANDUM OF AGREEMENT made this nineteenth day of December, One thousand nine hundred and eighteen:

Between:

DOLLY VARDEN MINES COMPANY, a company incorporated under the laws of the State of Delaware, and having its head office at the City of Chicago, in the State of Illinois,

Of the First Part

and

TEMISKAMING MINING COMPANY LIMITED, a company incorporated under the laws of the Province of Ontario and having its head office at the City of Toronto,

Of the Second Part.

WHEREAS the parties of the first part are the owners of those certain mining claims known as the Dolly Varden Mine, and the Wolf claims situate on or in the

vicinity of Kitsault River in British Columbia, and also of certain lands and mining claims at Alice Arm, and are the owners of a certain railway, which has been constructed from Alice Arm to the said Dolly Varden Mine, all of which property is fully set out and described in Schedule "A" hereto:

AND WHEREAS it is necessary to obtain an extension of time from the Government or Government department of the Province of British Columbia for an extension of time for the completion of the railway above referred to and it may be necessary in connection therewith to pay certain claims alleged to exist in respect of the construction of the said road and to provide moneys for such purposes and there is outstanding a mortgage for the sum of One hundred and fifty thousand dollars (\$150,000) to Goldfields Consolidated upon the properties known as the Dolly Varden properties, and further a balance of Twenty-five thousand dollars (\$25,000) to be paid to one Cameron upon the properties known as the "Wolf" properties, for the purpose of obtaining title thereto;

AND IT HAS BEEN AGREED by and between the parties hereto as hereinafter set out:

NOW THEREFORE THIS AGREEMENT WITNESSETH (1) The parties of the second part agree to advance and provide the following sums:

(a) The sum necessary to pay off the existing mortgage to Goldfields Consolidated, the principal of which is One hundred and fifty thousand dollars (\$150,000), together with accrued interest thereon;

(b) Such sums as may be necessary to pay off all labour and other claims which the Dolly Varden Mines Company may deem it advisable or desirable to have paid for the purpose of freeing the railroad referred to from any existing claims and of obtaining extension of time from the Government or Government Department of the Province of British Columbia for the completion of the said railway, such sum or sums however not to exceed in the aggregate the total sum of One hundred and fifty thousand dollars (\$150,000).

(2) In addition to the foregoing the said parties of the second part shall proceed to finish in such manner and to such extent as they may deem advisable the railroad above referred to so as to enable the operation of same from the Dolly Varden Mine to the present terminus at Alice Arm, and further to complete the equipment of the Dolly Varden Mine by the installation of a compressor plant and the installing of such further and other machinery and appliances, including aerial or other tramway, as they may deem advisable or desirable, it being agreed that the total amount required to provide for the finishing of the said railroad and the installation of such equipment shall not exceed the total sum of One hundred thousand dollars (\$100,000).

It is hereby expressly provided and agreed that in case it is found that by reason of slides, damage by weather, subsidence or other matters which have affected the grading or present condition of the railway that a sum in excess of Fifty thousand dollars (\$50,000) is required to complete the railroad and put such railroad in satisfactory operating condition, then any sum in excess of Fifty thousand dollars is to be borne and repaid by the parties of the first part as hereinafter provided.

Provided further, however, that in case the cost of equipping the mine by the said parties of the second part when completed shall have been less than Fifty thousand dollars, then the amount by which such cost shall have been less than Fifty thousand dollars shall be credited upon the excess cost over Fifty thousand dollars, incurred in respect of the railway, if there be any such excess, and the balance only of such excess shall be payable by the parties of the first part under the provisions of this paragraph.

It is hereby further expressly provided and agreed that the parties of the first part shall provide and pay all money necessary to be paid to one Cameron above

referred to to complete the purchase of the "Wolf" claims and take up the escrow and title papers so that complete title thereto may be made to the parties of the second part.

(3) It is hereby agreed that the parties of the first part shall execute and deliver to the parties of the second part a mortgage or mortgages in form to be satisfactory to the solicitors for the parties of the second part, for the amount of and to secure all the paid advances made by the parties of the second part under the preceding provisions of this agreement and such mortgage to be for a period until the first day of December, 1920, and to be payable at said date, said mortgage or mortgages to cover all the property or properties of the said Dolly Varden Mines Company, including particularly, but not so as to restrict the generality of the foregoing, all the properties set for in Schedule "A" hereto, said mortgage or mortgages to be a first charge or charges upon all the properties, free and clear from any prior liens, encumbrances or claims of any nature or kind whatsoever.

(4) It is hereby further provided and agreed that the parties of the second part shall provide and have available the necessary amounts for making the said advances at a chartered Bank in Vancouver, British Columbia, but that they shall not be obliged to make any advance until satisfied that same will clear off all encumbrances so as to leave them with mortgage and security as above provided as a first charge upon all the said properties.

(5) It is hereby further agreed that the parties of the second part shall be forthwith entitled to enter into possession of the said property and they agreed to proceed with all reasonable business expedition and dispatch to provide for the equipment of the said property and to have a compressor procured and delivery thereof made so as to be available as soon as same may be reasonably and conveniently obtained and transported to the said mine and to put the said mine in condition for production with reasonable dispatch.

(6) The parties of the first part shall forthwith execute complete transfers to the parties of the second part in due form transferring all the right, title and interest of every nature and kind and fully completing satisfactory title to all the properties and assets set forth and described in Schedule "A" hereto, and such transfers duly executed with all the formalities required by law, shall be deposited with the Royal Bank of Canada at Vancouver, with instructions to the said Bank to deliver the same to the parties of the second part upon completion of the payments hereinafter provided for, all of which payments may be validly made by being paid into the Royal Bank of Canada at Vancouver to the credit of the said parties of the first part.

(7) The said parties of the second part shall have the right to enter into entire possession of all the mining properties mentioned and described in said Schedule "A" hereto with all mines, minerals, metals and ores which now are, or may hereafter be found, in and upon the said properties together with full power and authority to the said parties of the second part, their workmen, servants and agents to search for, dig, work, mine, procure, ship, mine and carry away all such minerals, metals and ore and to open and work any mines which now are or may be found within the limits of the said lands, to make such erections and buildings as they shall from time to time deem advisable or desirable for the more effectual working of such mines and for the procuring and making it fit for sale any mineral that may be mined out of the said lands with full rights of way over and upon the said lands for the purpose of digging, working and carrying away minerals, metals and ores thereof, and entire possession of the railway above referred to, and the right to work and operate same as they shall deem advisable or desirable.

(8) The parties of the second part shall have the right to market, sell, dispose of and realize upon all minerals, metals or other products won or obtained from

the said properties as they may deem advisable or desirable, and in the ordinary course of business realization, and the amounts received as a result of such marketing, sale or disposition shall be dealt with as follows, namely:—

There shall be deducted and allowed from the total amount received the actual cost of mining and raising the said ore, metal or material, including all reasonable and proper expenses of management, freight charges, transportation and shipping charges, cost of operation of mill or other plant where the material is treated, any actual amounts paid for sampling and assaying, smelter charges, the amount of Government tax actually paid to the Province of British Columbia, or to any other Government or lawful authority in respect of the company's operations or the said properties, the actual cost of explosives, drill steel, and other tools used in and upon the property, also the cost of repairs, maintenance and upkeep of machinery, plant and tools used upon the said property and such further and other expenses as may be reasonably and properly and in the ordinary course of mining be charged against the said proceeds, together with all costs incurred in the operation, maintenance and repair of the said railroad and the remainder shall be termed "net proceeds" and shall be hereinafter in this agreement referred to as "net proceeds."

(9) It is hereby further provided and agreed that in addition to operating charges as hereinbefore defined and set out, the parties of the second part shall be entitled during the period of the currency of this agreement to proceed with development work upon the said property and to charge the expense of such development work to the extent hereinafter set out, but not to any greater extent, against the gross proceeds received from mining operations and such deduction shall be made before arriving at net proceeds as herein referred to. The extent to which the said parties shall be entitled to so charge expenses of development work shall be to the extent of one dollar and fifty cents (\$1.50) for each ton of ore raised and shipped, sold or otherwise disposed of from the Dolly Varden Mine, it being further agreed, however, that they may do such development work to the extent of Sixty thousand dollars (\$60,000) in the first year even although such sum of Sixty thousand dollars should exceed the amount of One dollar and fifty cents per ton of ore raised, shipped, sold or otherwise disposed of as aforesaid.

(10) The net proceeds shall be applied as and when received as follows:—

In the first instance to the repayment of all amounts secured by the said mortgage or mortgages to the Temiskaming Mining Company, Limited, in pursuance of the provisions hereinbefore contained and until the full amount of such mortgage or mortgages shall be fully paid and satisfied and upon such payment off and satisfaction proper discharge or releases of the said mortgage or mortgages shall be executed by the Temiskaming Mining Company, Limited, and shall be registered in the proper registry offices.

After payment off of the said mortgage or mortgages as aforesaid, the net proceeds shall be applied as follows:—

In payment to the Dolly Varden Mines Company of the total amount arrived at as follows, namely: There shall be deducted from the total sum of Nine hundred thousand dollars (\$900,000) the actual amount paid by Temiskaming Mining Company, Limited, to Goldfields Consolidated in respect of the mortgage for One hundred and fifty thousand dollars with interest above referred to, and in addition thereto all such sums as shall be expended in the payment of labour and other claims necessary to free the railroad from all claims against same and to procure the extension of time necessary for the completion thereof, being the several amounts referred to and set out in clauses "A" and "B" of paragraph one hereof.

There shall be further deducted and retained by the parties of the second part any sum or sums which may have been advanced by them for the purpose of paying off or disposing of any claims of the nature and kind referred to in Clause "B" of paragraph one hereof, at the instance of the parties of the first part in excess of One hundred and fifty thousand dollars, provided any such advance shall have been

so made, also any sum or sums that may have been advanced or paid in excess of the sum of Fifty thousand dollars for the purpose of completing and finishing the railroad as referred to in paragraph two hereof, subject to the provisions for credit as in said paragraph provided.

After the deduction of said sums and the completion of the payment thereof to the parties of the second part there shall be next paid from the net proceeds to Joseph Errington and J. D. Hubbard, the total sum of Fifty thousand dollars (\$50,000) as commission and remuneration for services performed in connection with the bringing about of this agreement, of which sum Twenty-five thousand dollars (\$25,000) shall be charged against Dolly Varden Mines Company and the other Twenty-five thousand dollars (\$25,000) shall be borne and paid by the parties of the second part out of their own moneys and chargeable to the Temiskaming Mining Company, Limited. No sum or sums shall be payable to the said Errington and the said Hubbard until the said mortgage to the parties of the second part shall have been paid off and subsequently only as net proceeds are available as hereinbefore provided. The balance of Nine hundred thousand dollars (\$900,000) remaining after deduction of all the sums mentioned and set forth in this paragraph (with the exception only of the Twenty-five thousand dollars payable by Temiskaming Mining Company, Limited, as their share of the payment to Errington and Hubbard which shall not be so deducted) shall be payable to the Dolly Varden Mines Company out of the net proceeds as hereinbefore defined and after the payment and retention of all the said sums hereinbefore in this paragraph referred to (with the exception of the last mentioned twenty-five thousand dollars) the net proceeds shall be paid to Dolly Varden Mines Company until the total amount of the balance so arrived at has been paid to them.

Upon payment of the said total sum the documents in escrow transferring the title in all the properties set out in Schedule "A" hereto, shall be delivered to the Temiskaming Mining Company, Limited, who shall be entitled to register same and who shall thereupon become and be the entire owners of the properties therein mentioned free and clear of all charges, liens or encumbrances except any charge, lien or encumbrance created by themselves.

(11) It is hereby expressly declared and agreed that the moneys payable to Dolly Varden Mines Company hereunder shall be payable only out of the net proceeds as herein provided and nothing herein contained shall be deemed or construed to create or imply any covenant or obligation on the part of the Temiskaming Mining Company, Limited, to make any payment save and except out of the net proceeds which shall have come to their hands, and further that nothing herein contained shall be deemed or construed to create or imply any obligation on the part of the Temiskaming Mining Company, Limited, to operate the said property or continue operations thereon if in the opinion of the Board of Directors of the said Company it should be unprofitable or inadvisable or undesirable from a commercial standpoint to operate the said properties.

It is further provided and agreed that if at any time prior to the payment off of the mortgage the Temiskaming Mining Company, Limited, shall decide to cease operations then and in such case upon the maturity of the mortgage the parties of the first part shall have the right upon payment of the amount thereby secured to pay off the said mortgage and upon the payment off of the said mortgage the property and rights the subject of this agreement shall revert to the parties of the first part.

Provided further that if after the payment off of the said mortgage and before the balance of moneys payable to Dolly Varden Mines Company shall have been paid the Temiskaming Mining Company, Limited, decide to cease operations upon the said property and give notice in writing thereof to the parties of the first part, or in case they shall actually cease operations upon the said property and operations shall cease to be carried on for a consecutive period of two years, then and in either such case the parties of the first part shall have the right to declare this agreement at an end and to retake possession of the said property and have the papers held in

escrow in the Royal Bank of Canada at Vancouver delivered up to them upon payment of any balance of expenditures which shall have been incurred by the Temiskaming Mining Company, Limited, as shown by the accounts kept in accordance with the provisions of paragraph twelve hereof, the intention of this provision being that the Temiskaming Mining Company, Limited, shall be repaid all balance of outlay over and above the receipts down to the time of the ceasing of such operations and that upon such payment title shall be revested in the parties of the first part.

(12) It is hereby expressly provided and agreed that the party of the second part shall keep the proper books of account and record showing truthfully and accurately the amount of all ore, mineral, metal and other material raised or won from the said property or any part thereof, the amount produced therefrom, the shipments made thereof, showing the names and addresses of the parties to whom shipped, the assay value and sampling value as shown by any and all returns received therefrom, the gross and net proceeds thereof, and all other particulars necessary or proper for the true and accurate ascertainment of the value of any such ore, mineral, metal, or other material and further will keep true and accurate accounts with proper vouchers showing all money expended upon said property and in the working and mining operations conducted thereon, with proper distribution, so as to enable a separation to be made of cost development work and all moneys received or expended in connection with the completion of any with the operation, maintenance and upkeep of the railway, and also in the installation of mining machinery and equipment upon the said property, if any, with proper distribution showing the amounts chargeable to the said respective accounts, and the said party of the first part by themselves or their duly authorized accountant or accountants, Agent or Agents, shall have the right to inspect and audit all such books of account and record and all books of the party of the second part relating to any of the matters in this paragraph referred to, and to inspect, check, and if they deem advisable or desirable, copy all reports, records, memoranda, assay or sampling, smelting, milling, concentrating or other returns, vouchers, or memoranda in any way relating or referring to the matters in this paragraph mentioned.

(13) It is further provided and agreed that the said party of the second part shall on the 20th day of July 1919 and on the 20th day of each succeeding third month thereafter during the currency of this agreement make and mail to the said parties of the first part, addressed to Railway Exchange, Chicago, Illinois, a true and accurate statement showing the amount of ore, mineral, metal and other material, won or produced from the said property down to the first day of the month preceding the month in which such statement is made, and the amount of all such ore, mineral, metal or other material shipped, sold or disposed of, the assay and sampling value thereof, the amount received down to the first day of said month, as the proceeds of any ore, mineral, metal or other material at any time shipped, sold or disposed of, also showing truly and accurately, the amount of all moneys expended in costs and expenses, as set out in paragraph 8 hereof, and also in the installation of mining machinery and equipment, upon the said property, if any, with reasonable particulars thereof.

(14) The Parties of the First Part do hereby covenant, promise and agree that if at any time the parties of the Second Part shall be advised by their Counsel that any other documents in addition to those deposited in escrow is reasonably necessary or desirable for the purpose of more fully and satisfactorily vesting in the Parties of the Second Part the property and assets by this agreement sold or agreed to be sold to the Temiskaming Mining Company Limited, then the said parties of the first part will upon the reasonable request of the Parties of the Second Part but at the proper costs, charges and expenses of the Party of the Second Part, execute all or any such further transfer, conveyance, assignment, Bill of Sale, or other document as may be reasonably advised or acquired for the more fully and effectually con-

veying, transferring to or vesting in the said Parties of the Second Part the assets and properties the subject of this agreement.

(15) It is hereby further provided and agreed that in case the parties of the First Part are unable to complete their arrangements for the clearing of the labour and other claims against the railway and obtain an extension of time from the Government or Government Department of the Province of British Columbia, for the completion of the said railway, and to complete all things necessary to enable them to give to the Parties of the Second Part clear title to the properties set out and referred to in Schedule "A" hereto and a first mortgage clear of all prior claims or encumbrances thereon, in accordance with the provisions of the agreement at the latest by the 31st day of March 1919 then the Parties of the Second Part shall have the right at their option by notice in writing mailed in a registered letter addressed to the Parties of the First Part at Railway Exchange Building, Chicago, Ill., to terminate this Agreement and upon the mailing of such notice said Agreement shall forthwith cease and terminate and shall be no longer in effect or binding as between the Parties hereto.

Provided further that in case the Parties of the Second Part so desire they shall have the right for a period following the 31st day of March 1919 and down to the 31st day of July 1919 to themselves arrange to clear the said title and obtain an extension of time for completion of the railway and for such purpose the Dolly Varden Mines Company does hereby authorise and empower the said Parties of the Second Part by themselves, or by any of their officers, servants, agents, Solicitors or other persons whom they may see fit to employ to adjust and settle all such claims and to obtain such extension of time to complete the said railway by the making of expenditures up to the amounts set forth in paragraph 2 hereof, and in case of the ultimate failure by July 31st 1919 this Agreement shall cease and terminate and be no longer in effect and binding as between the parties hereto.

(16) It is further distinctly provided and agreed that in case at any time after the said 31st day of July 1919 the parties of the First Part shall succeed in clearing the titles as hereinbefore referred to and in obtaining any extension of time to complete the said railway, then and so soon as they have cleared the said titles and obtained such extension they shall give notice in writing to the Temiskaming Mining Company Limited the Parties of the Second Part and therein shall offer to sell and transfer the properties the subject of this agreement to them at the price and upon the same terms and conditions, as are set out in this agreement save and except that they shall be entitled to be paid in addition to the price herein set forth any further or other sums, which may have been expended by them, beyond those in this agreement provided to be paid for the purpose of clearing the title and obtaining such extension and the said Temiskaming Mining Company Limited shall have sixty days from the date of their receipt of such notice within which to accept the said offer and in case they accept the said offer an agreement shall be entered into in the terms and conditions and in general accordance with the terms and provisions of this agreement.

It is hereby further provided and agreed that in case the Parties of the Second Part desire to make any assignment, sale or transfer of this Agreement or the benefits or advantages thereof, or of any of their interests thereunder to any person, firm or corporation whomsoever, they shall be entitled to do so, but only upon the condition that there be paid to Dolly Varden Mines Co. all the balance of the moneys payable to the said Dolly Varden Mines Company in accordance with the provisions of paragraph 10 hereof, and so that Dolly Varden Mines Company shall receive the full balance payable to them after deducting from the total sum of \$900,000.00 the several sums paid to Goldfields Consolidated and the amounts expended in settlements of labour and other claims and amounts as referred to and set out in paragraph 10 hereof, and within two years from the date of such assignment, sale or transfer.

(18) Subject to the provisions of paragraph 17 hereof, all the terms, provisions and conditions, of this agreement shall extend to, include, enure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS whereof the Parties hereto have hereunto affixed their Corporate Seals by the hands of their proper Officers.

SIGNED, SEALED AND DELIVERED }
in the presence of }
"A. HENRY" }

THE TEMISKAMING MINING COMPANY LIMITED

(Non-Personal Liability)

"J. P. BICKELL"

Prest.

"W. PRIM——"

Secy. (Company Seal)

SCHEDULE "A"

All the properties both real and personal of Dolly Varden Mines Company owned by them situate in the province of British Columbia, including more particularly but not so as to restrict the generality of the foregoing, the following:

The following crown granted mineral claims:

"The Dolly Varden" being District Lot 3194, Cassiar District, in the province of British Columbia;

"Dolly Varden No. 1" being District Lot No. 3192, Cassiar District, in the province of British Columbia;

"Dolly Varden No. 2" being District Lot No. 3193, Cassiar District, in the province of British Columbia;

"Dolly Varden No. 4" being District Lot 3195, Cassiar District, in the province of British Columbia;

"Dolly Varden No. 6" being District Lot 3197, Cassiar District, in the province of British Columbia;

"Dolly Varden No. 7" being District Lot 3198, Cassiar District, in the province of British Columbia;

"Dougall" being District Lot 3638, Cassiar District, in the province of British Columbia;

"Dougall Fraction" being District Lot 3642, Cassiar District, in the province of British Columbia;

"Waterfront" being District Lot 3639, Cassiar District, in the province of British Columbia;

Lease of mill site, being Lot 3640, Cassiar District, in the province of British Columbia, from the Government of the province of British Columbia, to Dolly Varden Mines Company, dated October 13th, 1917, for one year.

Lease of mill-site, being Lot 3641, Cassiar District, in the province of British Columbia, from the Government of the province of British Columbia, to Dolly Varden Mines Company, dated October 13th, 1917, for one year.

Lease of foreshore lands for wharf-site, being Lot 3635, Cassiar District, in the province of British Columbia, from the Government of British Columbia, to Richard B. McGinnis, dated October 3rd, 1917, for twenty-one years, and assigned to Dolly Varden Mines Company, by indenture dated 4th January, A.D., 1917.

Railroad right of way, railway and other franchises and rights acquired from the Government of the province of British Columbia, under Chapter 53 of the Statutes of British Columbia, 1917.

Water rights on Trout Creek, a tributary of the Kitsaulte river in the province of British Columbia.

Uncrown-Granted Mineral claims owned by the Dolly Varden Mines Company. "Waterfront-Fraction" Mineral claim, being District Lot No. 3800, Cassiar District, province of British Columbia.

"Beach" Mineral claim, being District Lot 3799, Cassiar District, in the province of British Columbia.

The following Crown Granted Mineral claims, on which the Dolly Varden Mines Company holds an option to purchase under indenture, dated 30th day of March, A.D. 1916, given by one Donald W. Cameron, to Dolly Varden Mines Company;

The "Wolf" Mineral Claim, being District Lot 3795, Cassiar District, in the province of British Columbia;

"Wolf No. 2" Mineral Claim, being District Lot 3794, Cassiar District, in the province of British Columbia;

"Wolf No. 3" being District Lot 3796, Cassiar District, in the province of British Columbia;

"Wolverine" Mineral Claim, being District Lot 3797, Cassiar District, in the province of British Columbia.

All the appliances, erections and construction of every nature and kind situate upon any of the said properties.

All machinery, plant, equipment, appliances, tools, supplies, and chattel property of every nature and kind, the property of the said Dolly Varden Mines Company, situate upon any of the said properties or stored in any place for use, to which the said Dolly Varden Mines Company is entitled.

The Railway from Alice Arm to Dolly Varden Mines, including any rolling stock, with all the right, title and interest of Dolly Varden Mines Company, in and to the said railway, the right of way over which same runs, and any right, title or interest whatsoever in any lands, buildings, constructions acquired or used in connection therewith.

Any telephone or telegraph lines to which the Company is entitled, or in which it owns any interest, to the extent of the interest of the said Company therein.

All or any boats, launches or other craft of any nature or kind whatsoever owned by them.

All wharves, pilings and other erections made by the Company at its terminals, or in the vicinity thereof at Alice Arm, or at or in the vicinity of any of the properties or claims above mentioned and described.

The Chairman laid before the meeting a proposition for the purchase of the entire assets of the Dolly Varden Mines Company, of British Columbia, with its Head Office at the City of Chicago, in the State of Illinois, upon the terms set forth in a draft agreement submitted to the meeting, and bearing date the blank day of December 1918, and made between Dolly Varden Mines Company and this Company.

After the proposition and the Engineer's reports of the properties had been discussed and carefully considered, it was unanimously agreed to accept the proposition outlined and contained in the said agreement, and upon the motion duly put to the meeting, and seconded, the President was authorized to conclude the terms of the agreement, execute the agreement, either in its present form, or with such amendments as may be necessary or shall be made to carry out the express intentions thereof.

Certified to be a true copy of Resolution of The Temiskaming Mining Company, Limited passed by the Directors at a Meeting of the Board held on the 13th day of December, 1918.

"W. Prim—"

Secretary.

The Temiskaming Mining Company, Limited,
Non-Personal Liability.

29th March, 1919.

L. W. PATMORE, Esq.,
Messrs. Patmore & Fulton.
Prince Rupert, B. C.

In re Dolly Varden Mines Company and Taylor Engineering Company Limited.

Dear Sir,—In performance of my promise, I am writing to say that the actual expenditure made by the Dolly Varden Mines Company, referred to in Section 10 of the Act to amend the Dolly Varden Mines Railway Act, will be deemed to include the wages of labour, the cost of materials, supplies, stores, equipment, camp equipment, freight, travelling, engineering, legal and clerical expenses, the wages of superintendents, the costs of insurance and inspection and the rent of equipment, so far as the same had been disbursed by the Dolly Varden Mines Company or the Dolly Varden Mines Syndicate in paying for the construction of the railway and the development of the premises defined in the Act, and in paying the purchase price of the premises up to the 22nd day of October, 1918, and that the actual expenditure made by the Dolly Varden Mines Company shall also include the costs of incorporation not exceeding the sum of \$1,000.00.

I would suggest that it would mean a great saving of time and expense if the Dolly Varden Mines Company were to admit that the actual cost of construction referred to in Section 9 of the Act, amounts to \$462,628.28, and that the Taylor Engineering Company Limited should admit that the actual expenditure made by the Dolly Varden Mines Company, referred to in Section 10 of the Act, amounts to the sum of \$613,000.00.

If you agree to this suggestion you can then instruct a representative to attend before the persona designata in Section 3 of the Act and admit that the actual cost of construction amounts to \$462,628.28, whereupon the Taylor Engineering Company Limited will admit that the actual expenditure made by the Dolly Varden Mines Company, amounts to \$613,000.00.

I shall be glad to hear from you in reference to this suggestion at your earliest convenience.

Yours truly,

“E. C. MAYERS.”

PATMORE & FULTON

April 17, 1919.

E. C. MAYERS, Esq.,
c/o MESSRS. TAYLOR, MAYERS, STOCKTON & SMITH,
Barristers, &c., Vancouver, B.C.

Dear Mr. MAYERS:—

Re Dolly Varden Mines Railway Act Amendment Act, 1919.

I beg to acknowledge receipt of your letter of the 29th ult., suggesting that we agree upon the amount of the actual cost of construction referred to in Section 9 of the Dolly Varden Mines Railway Act, Amendment Act, 1919, and also, that we agree upon the actual expenditure made by the Dolly Varden Mines Company referred to in Section 10 of the said Act.

I have taken the matter up with Mr. Hamill, and now beg to say that, on behalf of the Dolly Varden Mines Company, I am prepared to accept the suggestion in your letter, and will admit with you that the actual cost of construction referred to in Section 9 of the said Dolly Varden Mines Railway Act, Amendment Act, 1919, amounts to \$462,628.28 in consideration of the Taylor Engineering Company, Limited,

for whom you are acting, admitting that the actual expenditure made by the Dolly Varden Mines Company, referred to in Section 10 of the said Act, amounts to the sum of \$613,000.00.

I hereby authorize you to appear before Mr. Justice Clements, commissioner under the said Act, and admit the figures as above set forth, and you may use this letter for the purpose of this admission.

I received the notice stating that the hearing would be held on the 22nd day of April, 1919, which you sent to me under cover of your letter of April 11th.

Yours very truly,

L. W. PATMORE

Solicitor and Registered Attorney of the Dolly Varden Mines Company.

P/S

January 14th, 1920.

R. T. ELLIOTT, Esq.,
Vancouver Hotel,
Vancouver, B.C.

In re Dolly Varden Mines Company.

DEAR SIR,—

I beg to inform you that the Prime Minister has given to me a copy of your telegram to him of the 13th instant.

The facts of this matter are as follows: On April 24th, 1919, I could not apply for the registration of a charge in favour of the Dolly Varden Mines Company for two reasons.

Firstly: Form D which must be used upon an application for the registration of a charge must be signed by the applicant, or its Solicitor, or agent, and I was neither the Dolly Varden Mines Company, nor its Solicitor, nor agent:

Secondly: Upon an application for the registration of a charge a fee of one-tenth of one per cent, must be paid, which, in this case, would have amounted to \$613.00 whereas I had no money of the Dolly Varden Mines Company to apply for that or any other purpose.

When the Order of Mr. Justice Murphy was made directing the Registrar to register, the terms of the order were that the Registrar should register pursuant to the Act, which he accordingly did and I have before me a letter from the District Registrar of Titles at Prince Rupert dated the 9th day of July, 1919, in which he notifies me of his having effected registration of the Taylor Engineering Company, Limited, subject to the charges "A", "B", "C", "D", of Section 5 of the "Dolly Varden Mines Railway Act, Amendment Act, 1919" of which the charge lettered "D" is that in favour of the Dolly Varden Mines Company: I also have before me a certificate of the state of the title dated the 22nd day of December, 1919, which shows that the property is registered in the name of the Taylor Mining Company, Limited, subject to a number of charges of which the fourth is that lettered "D" in Section 5 of the Act, being the charge in favour of the Dolly Varden Mines Company.

Incidentally of course it would be obvious to any one with any legal training that nothing that I or any one else could do could deprive the Dolly Varden Mines Company of the charge conferred upon them by the Statute.

Reverting now to your telegram, either one of two things must be true: either you searched the records which show the true state of affairs as I have shown above, in which case your telegram is a deliberate falsehood, or you did not take the trouble to inform yourself accurately before launching so serious a charge, in which case you would seem to have acted with almost incredible carelessness.

In view of the fact that not so many years ago I was fortunate enough to assist in saving you from the consequences of your own mistake involving a possible liability of \$100,000 I feel that I am entitled in common decency to an explanation of, what, on the face of it, would appear to be an utterly unjustifiable and very gross outrage.

I am sending a copy of this letter to the Prime Minister.

Yours truly,

E. C. MAYERS

ECM/GN

VANCOUVER, B.C., 15th January, 1920.

E. C. MAYERS, Esq.,

c/o Messrs. Taylor, Mayers, Stockton & Smith,
601 Rogers Building, Vancouver, B.C.

Re Dolly Varden.

DEAR SIR,—I have your letter of 14th inst., and, in reference thereto would ask you:

1. Why if you had no authority to apply for registration of a charge in favour of the Dolly Varden Company, you wrote to the District Registrar telling him that you did not wish to apply for registration of the Dolly Varden charge until later?

2. Could the Registrar understand anything other than that you had power to speak for the Dolly Varden?

3. If he had acceded to your suggestion and effected registration omitting the Dolly Varden charge would the result have been honest or fraudulent?

4. Does a course of action toward a Government Department cease to need investigation because it is attempted and fails?

I feel sure that upon consideration of these questions you will see that your letter to me should have been confined to an explanation that the Registrar refused to entertain your suggestion that the Dolly Varden charge be omitted; insisted upon having a judicial order before registering; and interpreted this Order to mean that the registration should be made subject to the four statutory charges.

My necessary course is to fulfil the pressing duty of attending to the interests of the Dolly Varden Mines Company, and, believe me, I am truly sorry if it renders necessary any unkind references to the courtesies we have exchanged in the past.

Yours truly,

"R. T. ELLIOTT."

(Copy to Hon. Jno. Oliver)

January 17th, 1920.

R. T. ELLIOTT, Esq., K.C.,
Hotel Vancouver Annex,
Vancouver, B.C.

In re the Dolly Varden Mines Co.

DEAR SIR,—I beg to acknowledge receipt of your letter of the 15th inst., and to reply to your question as follows:

1. The reason for my letter of the 24th April last was this: Section 5 of the Act does not say who is to be responsible for registration of the charges, but does say that the fees are to be paid by the charge-holders: therefore I considered that whatever duty there might be upon the Taylor Engineering Company as to the registration of the charges, that duty did not extend to payment of the fees: I intended, if the occasion arose (for at that date I did not know whether the Dolly Varden Mines Company

was going to pay its just debts or not) to call upon Mr. Patmore, who was the Dolly Varden Mines Company's solicitor, either to supply me with the money necessary to pay the fees, and authorize me to apply, or else to apply himself for registration of this company's charge.

2. The District Registrar never had the slightest ground for misapprehension on this score: he knew that Mr. Patmore acted for the Dolly Varden Mines Company and that I acted for the Taylor Engineering Company, and in fact in my letter of the 24th of April last I set out by saying that it might become necessary for me to apply on behalf of the Taylor Engineering Company for registration of the title of that Company to certain specified lands. Moreover, the District Registrar says in his letter to me of the 8th of May last:—

"It appears to me that the Act to which you refer provides that upon the happening of certain things the Dolly Varden property shall become vested in the Taylor Engineering Company subject to certain charges and upon these events happening; it would seem to me the proper party to apply for registration, and to pay the registration fees, would be the Taylor Engineering Company."

This quotation shows that the District Registrar knew for whom I was acting, and also shows what was the difference between us, viz.: that the District Registrar took the view, which I believed then and believe now to be wrong, that the Taylor Engineering Company ought to pay the fees for registration of the charges. My view of the meaning of the last sentence in Section 5 is set out in my letter to the District Registrar on the 5th of May last as follows:

"I would like you to notice that by the concluding words of Section 5, the title of any party is only to be registered upon payment of the proper fees by that party from which I infer that it was the intention of the Act, that each party entitled should make his own application and pay the requisite fees; in this view it seemed to me permissible for the Registrar to register such titles as were applied for from time to time."

3. If the District Registrar had registered without any reference whatever to the charges, the position of the charge-holders would not have been affected in the least: the rights of the charge-holders were conferred by a Statute of which all the world is deemed to have notice; the very title of the Taylor Engineering Company was expressly made by that Statute subject to all the charges and the instrument, viz.: the Statute on which that title rested was necessarily referred to expressly in the application for registration and that application and that instrument necessarily remained on record in the Land Registry Office, so that under no circumstances and by no means could the title of the Taylor Engineering Company have been disencumbered of any one of the four charges, save by payment thereof. The only object of registering any title created by the Act was to prevent the possibility of strangers dealing with the Dolly Varden Mines Company and then discovering that that Company had nothing to deal with. Any attempt therefore to get rid of any of the charges would have been not only wicked but absolutely futile.

4. It is the failure on your part to make a proper or indeed apparently any investigation which causes my indignation at your conduct.

It is tedious to have to deal with so many incorrect statements on your part: the matter was fully argued before the Judge in Chambers; and the grounds taken in support of the refusal to register were that I had applied for an indefeasible title and had failed to produce the Crown Grants. No question was ever raised as to the registration or non-registration of the charge. Contrary to the District Registrar's previous contention I was not obliged to apply for registration of any charge or to pay any fees for such registration: I drew the Order myself and in a form which compelled the District Registrar to register the title of the Taylor Engineering Company subject to all the charges, leaving it to him to collect the fees from the different charge-holders.

Reverting to your telegram of the 13th inst., its language is explicit that the title of the Taylor Engineering Company had been registered free from the charge in favour of the Dolly Varden Mines Company.

If, when your attention was drawn to the falsity of this telegram, you had frankly admitted that you had made a gross error and an utterly baseless charge, and expressed contrition, your conduct, while by no means admirable, might have been pardoned, but it seems to me even more unworthy to resort to the equivocations contained in your letter under reply, and I cannot at all agree that such methods are necessary even in the interests of the Dolly Varden Mines Company.

Yours truly,

"E. C. MAYERS."

REPORT OF SELECT COMMITTEE

Mr. Whiteside presented a report from the Select Committee appointed to investigate the dispute between the Dolly Varden Mines Company and the Taylor Engineering Company, Ltd., as follows:—

Mr. SPEAKER, Your Select Committee appointed on February 10th, 1919, to investigate the dispute between the Dolly Varden Mines Company and the Taylor Engineering Company, Limited, reports as follows:—

The dispute between these two companies comes before the legislature in the form of a petition by the Dolly Varden Mines Company for an extension of the time given to it under the "Dolly Varden Mines Railway Act" of 1917, in which to complete the construction of the Dolly Varden Mines Railroad, and a cross-petition by the Taylor Engineering Company, Limited, contractors for the construction of the road, praying that such a renewal of the Dolly Varden Mines Railroad charter be not granted except upon such terms as shall constitute their claim for the unpaid balance of the charge for construction, amounting to approximately \$462,500 as a lien upon the assets of the Dolly Varden Mining Company.

Your Select Committee was composed of the following: David Whiteside, Chairman; Messrs. John Yorston, W. A. McKenzie, F. A. Pauline and J. S. Cowper, Secretary. Counsel for the Dolly Varden Mines Company were C. H. Hamill of Chicago, and Mr. L. W. Patmore, of Prince Rupert. Mr. E. C. Mayers of Vancouver, appeared as counsel for the Taylor Engineering Company, Limited. The Select Committee commenced its hearings on Wednesday morning, February 12th, and held thirteen morning and evening sessions, concluding on Friday, February 21st.

The following witnesses appeared and testified before the Committee: Messrs. A. J. T. Taylor, President of the Taylor Engineering Company, Limited; J. S. Connell, B.Sc., C.E., Engineer for the Taylor Engineering Company, Limited; S. H. Maloney, foreman of construction for the Taylor Engineering Company, Limited; Wm. McLean, C.E., a former employee of the Taylor Engineering Company, Limited; R. W. McIntyre, C.E., Assistant Engineer to the Government Railway Department; C. J. Seymour, C.E., a former employee of the Taylor Engineering Company, Limited; John Anderson, Accountant; J. D. Hubbard, President of the Dolly Varden Mines Company; A. F. Proctor, Chief Engineer of the Railway Department of the Provincial Government; and R. S. McGinnis, Resident Engineer for the Dolly Varden Mines Railroad.

Messrs. J. Gilbert and H. Langley acted as reporters of the proceedings, the evidence filling 568 pages. In addition, there was filed with the Committee a voluminous correspondence between the parties.

Upon the following facts the parties are in substantial agreement: The Dolly Varden Mines Company, incorporated in the State of Delaware, has been developing a group of mineral claims near the Kitsault River, about eighteen miles distant from Alice Arm.

The Mining Company entered into an arrangement with the Taylor Engineering Company, Limited, for the construction of a line of railroad to connect the mines with tide-water. In pursuance of this object the Mining Company obtained from the Legislature in 1917 a public Act authorizing it to construct the road. Section 11 of the Act provides that all work must be completed before December 31st, 1918.

At the outset a light dinkey road was required, following the path of an existing pack-trail, with capacity to haul out daily 30 tons of ore or concentrates. The Mining Company, in its desire to have the road completed and the mine operating before the close of the year 1917, desired that the work should proceed at once without the delay involved in having the usual surveys made and quantities calculated. The Taylor Engineering Company, Limited, accepted the contract on a cost plus 10 per cent basis. A written agreement that the work would not cost more than \$175,000 was given by the Taylor Engineering Company, Limited. This agreement, however, was, according to the evidence of Mr. Taylor, supplemented by a private verbal agreement whereby President Hubbard, of the Mining Company, agreed to see that any excess above this figure up to an extra \$100,000 would be paid.

After the road was commenced, labour difficulties, the increased cost of materials, improved standard of construction required, and unexpected difficulties in engineering resulted in an expenditure during the first season of over \$275,000 without the road being nearly completed. Mr. Hubbard observed the private agreement he had made to the extent of paying the contractor \$70,000 out of the extra cost of \$100,000, and work was stopped on the construction owing to lack of funds. Up to this point there is nothing in the relation of the two companies which calls for adjudication on the part of your Committee.

The present dispute arises out of the operations for the year 1918. Mr. Taylor was very anxious to complete the construction of the road. At the same time the shareholders of the Dolly Varden Mines Company, through Mr. Hubbard, were endeavouring to negotiate a sale of the property to the Granby Consolidated Mining, Smelting and Power Company, Limited. Mr. Hubbard represented to Mr. Taylor that the Dolly Varden Company was unable to assume any financial responsibility for further work done upon the road, but assured Mr. Taylor that if he desired to go on at his own risk he would be fully paid in the event of the sale to the Granby Company being made. In the event of the sale to the Granby Company not being made, Mr. Hubbard stated that so long as the work done was done to the satisfaction of the engineers of the Dolly Varden Company, the Taylor Engineering Company, Limited, would have all its just claims paid and be given proper compensation for engineering and contractors' profits out of any subsequent disposition of the mine.

The letter from Mr. Hubbard to Mr. Taylor, dated May 14th, 1918, is as follows:—

“VANCOUVER, B.C., May 14th, 1918.

“Gentlemen,—I understand that you have proposed to Mr. Sylvester, of the Granby Company, that the Taylor Engineering Company should resume construction of the Dolly Varden Railroad and carry it on pending the examination of the Dolly Varden properties by the Granby Company; that if the Granby Company should elect to exercise its option and purchase the Dolly Varden properties, the Granby Company would reimburse the Taylor Engineering Company for the outlay and make satisfactory arrangements with you for the completion of the road. I understand that Mr. Sylvester has indicated a willingness to accept your offer.

“We are not concerned with any arrangement you may make with Mr. Sylvester in regard to the matter, provided the Granby does ultimately take the properties over; but in case they should not do so, it is obvious that your relations with the present owners of the property would become important and would require serious consideration.

"You are already fully informed of the limitations and conditions affecting the ownership and the policy of the owners at this time, and this knowledge will enable you to readily understand the position which I am compelled to take.

"The owners cannot and will not assume any liability whatsoever at this time. They will recognize neither a financial nor a moral responsibility to reimburse you, or to compensate you for this work in case the Granby Company does not buy the properties. They cannot and will not permit the properties to become subject to any lien for material, labour or other charges. If the Taylor Engineering Company undertakes this work it will be necessary to have from them an instrument releasing the present owners from any financial or moral responsibility in the matter, and expressly waiving lien rights and protecting the property against such rights, not only as to the Taylor Engineering Company, but as to sub-contractors and material men.

"As against this, you can rely upon the following facts and assurances: If the Granby Company should not exercise its option to take over the properties, it is obvious that the present owners will either have to reorganize, complete the railway, and operate the properties themselves, or dispose of them to some purchaser other than the Granby Company. In either event, and subject to the limitations stated below, I will personally assure you that any just claims you might have for the work done and materials furnished will be recognized and provided for either in case of reorganization or sale to others. Compensation for such claims would include not only a reimbursement, but proper compensation for engineering and contractor's profits. This assurance, however, presupposes that all work shall be done to the satisfaction of the owners, and will have to be approved by their Engineers, who would be the sole judges as to whether and how far the work would be acceptable.

"You may safely assume that the Dolly Varden properties with the railway constitute an asset of sufficient value to justify the assumption that any just claim you might have could and would be taken care of in the final "work-out" of the proposition and in any event. A final payment of \$25,000 is due on October 1st next on the Wolf claims, and the Goldfield Consolidated Mines Company loaned \$150,000 at 6 per cent, which is due January 1st, 1919, and for which the Goldfield Consolidated Company is entitled to a mortgage. This mortgage has not yet been recorded and its final form is yet to be agreed upon. I cannot personally guarantee it, but I have no doubt the payment on the Wolf claims will be made when due. In spite of the statement, the owners will not and cannot consider any arrangement which might create a lien upon the property, in case of foreclosure of the Goldfield mortgage, and failure to redeem by the present owners, arrangements could and would be made whereby you could redeem from such foreclosure.

Yours truly,

"J. D. HUBBARD".

Relying upon the undertaking given in the latter paragraph of Mr. Hubbard's letter, the Taylor Engineering Company, Limited, resumed construction work in 1918. All parties were at that time expecting the sale to the Granby Company to be carried out, and the work upon the road was done to conform to the requirements of the Granby Mining Company, which required a road-bed of increased width with easier curves and capable of hauling 400 tons of ore daily. This work was done, as the correspondence shows, under the supervision of Mr. R. B. McGinnis, the Resident Engineer for the Dolly Varden Mines Company.

The work was carried on in 1918 on the credit and capital of the Taylor Engineering Company, Limited, which by the middle of July of that year was at the end of its resources; when the offer of purchase was finally made by the Granby Company, it was refused by the directors of the Dolly Varden Mines Company owing to dis-

satisfaction over the proposed conditions of operation. The financial embarrassment of the Taylor Engineering Company was very well known to Mr. Hubbard and his Engineer, Mr. McGinnis. On August 19th, 1918, Mr. McGinnis wired to his chief, notifying him in effect that the Taylor Engineering Company were at that date so far committed financially that they could not stop construction without financial ruin. On October 12th the Granby offer was refused. On October 22nd construction work ceased and the Taylor Engineering Company assigned for the benefit of its creditors.

Since assignment Mr. Taylor, in his efforts to enable the Dolly Varden Mining Company to obtain the money wherewith to pay off his claim, succeeded in bringing Mr. Hubbard and a representative of the Temiskaming Mining Company, of Cobalt, together. Mr. Taylor endeavoured to effect a sale of the Dolly Varden properties to the Temiskaming Company at a price of \$1,100,000, his services as an agent in the matter being given without charge. Since then, Mr. Hubbard, of the Dolly Varden Company, and Mr. Errington, representing the Temiskaming Company, have arranged for the sale of the property to the Temiskaming Company at a price of \$900,000, which includes a commission of \$50,000 to be divided between Messrs. Hubbard and Errington, this sale being conditional upon the renewal of the charter to the Dolly Varden Mines Railway.

The sum of \$900,000 is insufficient to pay all parties without loss, and your Committee understands that the proposal of the Dolly Varden Mines Company, which claims to have invested \$640,000 in the property, is that the charter for the railroad be extended on condition that they pay in full the wage claims for the construction of the road, amounting to approximately \$150,000, and that the creditors of the Taylor Engineering Company divide with them the losses on the mine and railroad project.

It was urged by counsel for the Dolly Varden Mining Company that the President of his company, in his letter of May 14th, 1918, repudiating all moral and financial liability to the contractors, had no authority to bind the company to any undertaking in the event of a sale to the Granby Company not being carried out. Assuming this to be so, Mr. Hubbard having been allowed to assume the direction of the affairs of the Dolly Varden Mining Company, your Committee considers that it would be unjust to allow the Dolly Varden Mines Company to divest itself of liability for the construction of the railway, especially when the company is engaged in marketing the very labour and material which was placed on their property as a result of the inducements held out by its President in his letter of May 14th, 1918.

The correspondence and evidence showed that the work in 1918 was carried out without excessive cost under the supervision of Mr. R. B. McGinnis as Resident Engineer of the Dolly Varden Company, who reported to the President of his company on September 11th, 1918, (six weeks before work stopped): "The construction work on the road has been well done throughout, and the only complaint we could make is that they had spent more money on the upper end than we intended to at this time."

Mr. McGinnis also says in the same report to his President: "If Granby takes the property it is all right, and if we keep it we still have a good road, but have a heavier investment than was absolutely needed at the start. We could have changed the road later."

The evidence of the Government Railway Engineers who inspected the line was, however, that the road only met with the minimum requirements, was not extravagantly built, and that had it been less well built they would not have taken the responsibility of issuing the company a certificate to commence railroad operations.

Your committee, therefore, being satisfied on the evidence that the work was properly performed and that the Taylor Engineering Company resumed operations in 1918 on the promises made in the letter of May 14th by Mr. J. D. Hubbard, Presi-

dent of the Dolly Varden Mines Company, that the Taylor Engineering Company would be paid in full for its just claims, either from a sale to the Granby Company or "sale to others", feel that the Taylor Engineering Company is entitled to be paid in full for its "just claims . . . for work done and materials furnished", to "include not only a reimbursement, but proper compensation for engineering and contractor's profits," to adopt the language used by the President of the Dolly Varden Company in his letter to the Taylor Engineering Company.

Your Select Committee points out that since the Dolly Varden Mines Company entered into the proposals to sell to the Temiskaming Mining Company for a price of \$900,000, an offer of \$1,100,000 for the property had been made by Mr. S. S. Taylor, K.C., on behalf of the creditors of the Taylor Engineering Company. This offer is without the payment of commission to any one, and if carried into effect would enable all the creditors to be paid in full, and leave a sum larger by over \$50,000 for the shareholders of the Dolly Varden Mining Company than under the offer of the Temiskaming Mining Company.

Your committee therefore recommends as follows:—

(1) That a renewal of the charter of the Dolly Varden Mines Railway be granted to the Dolly Varden Mines Company upon compliance with the terms and conditions set out in the draft Bill annexed hereto.

(2) That if the Dolly Varden Mines Company and the Taylor Engineering Company cannot agree upon the cost of construction of the Dolly Varden Mines Railway during the year 1918, such cost shall be ascertained by reference to one of the Judges of the Supreme Court of British Columbia to be named by the Minister of Railways, and the cost so ascertained, together with 10 per cent thereof added for contractor's profit, shall be declared a debt due from the Dolly Varden Mines Company to the Taylor Engineering Company.

(3) That the sum so ascertained to be due be constituted a lien or charge upon the said railway and upon all the assets of the Dolly Varden Mines Company, situate in the province of British Columbia, as the same are set forth and described in the draft Bill submitted herewith, subject only to a mortgage for the sum of \$150,000 and interest in favour of Goldfields Consolidated, and to the balance of purchase-money due to Donald W. Cameron in respect of the Wolf Group of Mineral Claims.

(4) That all wages due in respect of the construction of the Dolly Varden Mines Railway in 1918 be paid by the Dolly Varden Mines Company within fourteen days after the enactment of legislation giving effect to your Committee's report.

(5) That the balance of the moneys due the Taylor Engineering Company in respect of the construction of the said railway shall be paid within thirty days after the amount of the same has been so ascertained.

(6) That if the Dolly Varden Mines Company do not wish to assume the burden of the aforesaid payments to the Taylor Engineering Company, they must so notify the Minister of Railways within one week after the adoption of this report by the Legislature, in which event the Taylor Engineering Company shall have the right, upon the terms and conditions hereinafter mentioned, to acquire from the Dolly Varden Mines Company the said railway and all the assets enumerated in the Schedule attached to the said draft Bill, and the Dolly Varden Mines Company shall be entitled to receive from the Taylor Engineering Company the amount of its investment in said assets in said Schedule mentioned, such amount to be ascertained, in case of disagreement, in the same manner as the cost of construction of said railway.

(7) In the event of the Taylor Engineering Company becoming entitled to acquire the said railway and other assets of the Dolly Varden Mines Company hereinbefore mentioned, the Taylor Engineering Company shall pay off and discharge the said mortgage to the Goldfields Consolidated, or otherwise protect the Dolly Varden Mines Company against all claims and demands in respect of the same, and shall also pay off the balance of purchase-money due to said Cameron in respect of the Wolf Group of Mineral Claims mentioned in said Schedule, and shall also within one

week after the adoption of this report produce evidence satisfactory to the Minister of Railways of the Taylor Engineering Company's ability to complete the purchase of said assets from the Dolly Varden Mines Company.

(8) In the event of the Dolly Varden Mines Company deciding not to pay the cost of construction of the said railway, and in the event of the Taylor Engineering Company acquiring and exercising the right to take over the said assets upon payment of the amount of said Dolly Varden Mines Company's investment in the same, the latter company shall be released from all claims and demands of the Taylor Engineering Company in respect of the construction of said railway, and shall be entitled to be paid by the Taylor Engineering Company the amount of its investment so ascertained as aforesaid upon the terms set forth in the draft Bill submitted herewith.

The evidence upon which this report is based is submitted herewith.

All of which is respectfully submitted.

D. WHITESIDE,
Chairman.

(Approved 11 January, 1919)

DEPARTMENT OF JUSTICE, OTTAWA, 7th January, 1919.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit copy of a letter of 10th ultimo, addressed to the Minister of Justice, on behalf of the Esquimalt and Nanaimo Railway Company, the Canadian Collieries (Dunsmuir) Limited, and the National Trust Company, Limited, requesting upon the grounds therein set out that the Lieutenant Governor of British Columbia be instructed to reserve for signification of Your Excellency's pleasure assent to any bills which may be passed by the Local Assembly and presented for his assent re-enacting in substance or effect the provisions of the Vancouver Island Settlers' Rights Amendment Act, which was disallowed by Order in Council of 30th May last, or taking away from the Esquimalt and Nanaimo Railway Company rights which it acquired under the Dominion grant of 21st April, 1887, or affecting the title to the foreshore claimed by the latter Company under the said grant, and which are now in litigation upon appeal to the Judicial Committee of the Privy Council. The undersigned apprehends that legislation of the character in question would conflict with the policy of Your Excellency's Government as enunciated in the report of the Minister of Justice of 21st May last upon which the disallowance of the Vancouver Island Settlers' Rights Amendment Act proceeded, and in view of the doubt which is suggested as to the effect of disallowance with relation to Acts done or powers executed previous to disallowance under statutes enacted within the authority of the legislature it would seem not unreasonable to comply with the request submitted, if there be any substantial foundation for the fears entertained by the petitioners. The undersigned considers however that it would not be improper in the circumstances to submit this application for report of the local Government, and that the matter should be further considered upon receiving that report. He accordingly recommends that copy of this report, if approved, and of the accompanying letter, be transmitted to the Lieutenant Governor of British Columbia, for the observations of his Government, and inasmuch as it is represented that the Provincial Legislature is to assemble on 30th instant, that the Lieutenant Governor be requested to submit his report so that it may be considered in the interval.

Humbly submitted,

Acting Minister of Justice.

TORONTO, December 10th, 1918.

To the Honourable the Minister of Justice,
Ottawa, Canada.

Re: Vancouver Island Settlers' Rights Act.

SIR,—

1. The Vancouver Island Settlers' Rights Act, 1904, Amendment Act, 1917, was disallowed on the 30th of May, 1918, upon your recommendation.

2. Since the date of said disallowance, the Premier of British Columbia has publicly announced that it is the intention at the next sitting of the Legislative Assembly of the Province of British Columbia, which will probably be called in the month of January, 1919, to introduce early in the said session a bill re-enacting said legislation or enacting legislation to the same effect.

3. Prior to the said disallowance, the Lieutenant-Governor in Council of British Columbia had held an alleged hearing of two of the applications presented under the above mentioned Settlers' Rights Act and had granted certain lands pursuant to said applications whereupon the Esquimalt and Nanaimo Railway Company brought action against the grantees and said actions are now pending in the Courts of British Columbia. In such actions the position taken by the grantees is that the grants made pursuant to the said Act are good, notwithstanding the said disallowance, the argument being that disallowance only takes effect upon the proclamation of said disallowance and that anything done up to that date in alleged pursuance of the powers contained in the said Act is good. It is feared that in case the said legislation is re-enacted or legislation to the same effect is passed and the last mentioned contention is sound in law, the Lieutenant-Governor in Council may, before disallowance could be had, hear and dispose of the applications which might be made pursuant to said re-enacting or new legislation and in such case our clients would have no recourse whatsoever and further disallowance would be of no avail.

Re: Esquimalt and Nanaimo vs. McLellan

The Province of British Columbia granted to McLellan a license and later on a lease under the Coal and Petroleum Act of the under-surface rights under Sections 5, 6 and 7, Ranges 7 and 8, Cranberry District in the Province of British Columbia. The said lands had been granted to the Esquimalt and Nanaimo Railway Company by the Dominion of Canada by Crown Grant dated 21st of April, 1887, pursuant to the terms of Chapter 6 of the Statutes of Canada, 1884. The said lands had been granted to the Dominion of Canada by Chapter 14 of the Statutes of British Columbia, 1884. The Esquimalt and Nanaimo Railway Company on the 3rd of April, 1917, brought an action against the said McLellan and were successful in obtaining a declaration that it was the owner of the under-surface rights under said lands in Cranberry District and upon appeal, the Court of Appeal unanimously decided in favour of the Esquimalt and Nanaimo Railway Company. (See Esquimalt and Nanaimo Railway Company vs. McLellan, 1918, 3 Western Weekly Reports, Page 645, where the decision of the Court of Appeal is reported.) The Esquimalt and Nanaimo Railway Company is informed and believes that it is the intention of the British Columbia Government at the next Session to introduce legislation taking away from the Esquimalt and Nanaimo Railway Company the rights which were granted to it in the said lands by the said Dominion Crown Grant of the 21st April, 1887, and which rights had been declared to belong to it by the Courts of British Columbia and give said rights to McLellan, and further the Esquimalt and Nanaimo Railway Company are advised and believe that it is the intention of the Province at the same Session to declare that the Province is the owner of the surface and under-surface rights in certain other properties which were granted by the

Dominion to the Esquimalt and Nanaimo Railway, as aforesaid, and which lands the Esquimalt and Nanaimo Railway Company believe are exactly in the same position as the lands, the rights to the under-surface rights of which was determined in the McLellan litigation.

Re: Esquimalt and Nanaimo vs. Treat

The Province of British Columbia granted to one, Treat, a license under the Coal and Petroleum Act of British Columbia of the foreshore and certain lands adjoining the forshore opposite lands which passed to the Esquimalt and Nanaimo Railway Company by the Crown Grant of 21st April, 1887, above referred to, and the Esquimalt and Nanaimo Railway Company brought an action against the said Treat and were unsuccessful at the trial and before the Court of Appeal of British Columbia, but obtained leave to appeal to the Privy Council and the said appeal is being perfected and will be brought on for hearing before the Privy Council as soon as possible.

The Esquimalt and Nanaimo Railway Company fear that the Province of British Columbia may pass legislation at the next Session of the Legislative Assembly to determine the title to the said foreshore and the lands adjoining the same, which would have the effect of depriving the Esquimalt and Nanaimo Railway Company of its appeal to the Privy Council and take away from the Esquimalt and Nanaimo Railway Company its title to the said foreshore which it believes it will be successful in establishing by the judgment of the Privy Council.

The said three Companies, therefore ask that a direction be given by His Excellency the Governor General to His Honour the Lieutenant Governor of the Province of British Columbia that the royal assent to all bills which deal with the matters hereinbefore mentioned be reserved for the signification of the pleasure of His Excellency the Governor General.

We are,

Yours respectfully,

E. LAFLEUR,

Counsel for Esquimalt and Nanaimo Railway Company.

BARNARD, ROBERTSON, HESTERMAN & TAIT.

Solicitors for Canadian Collieries (Dunsmuir), Ltd.

BLANCHARD, ANGLIN & CASSELS,

Solicitors for National Trust Company, Limited.

(Approved 31 January, 1919)

DEPARTMENT OF JUSTICE, OTTAWA, 31st January, 1919.

Memorandum for the Under-Secretary of State

Referring to the Order in Council of 11th instant, and the accompanying letter of tenth of December last, signed by Mr. E. Lafleur, Counsel for the Esquimalt and Nanaimo Railway Company, and others, copy of which you recently transmitted to the Lieutenant Governor of British Columbia, and to the Lieutenant Governor's telegram of 30th instant, copy of which you have referred to me, in which the Lieutenant Governor states that his Government proposes to recommend the Settlers' Rights Amendment Act, and declines to announce policy regarding the McLellan and Treat matter, and that a letter with full particulars has been mailed, as I am informed that the Legislature of British Columbia is now in session and as the aforesaid message from the Lieutenant Governor contains no assurance that the proposed legislative action will be deferred pending the correspondence which may ensue, I am to recommend that the Lieutenant Governor be instructed by telegraph, pending further consideration

or discussion of the matters referred to in the aforesaid letter of 10th December last, either to withhold his assent to any bill which may be presented therefor, giving effect to any of the apprehended legislative measures mentioned in the letter of 10th December last aforesaid, or to reserve the same for the signification of the Governor-General's pleasure.

You will observe that according to the provisions of Section 55 of the British North America Act, 1867, when a bill passed by the House or Houses of the Legislature is presented to the lieutenant Governor of the Province for assent he shall exercise his discretion, subject to the provisions of the Act and of the Governor General's instructions. Therefore I apprehend that the instructions herein recommended should be sanctioned by His Excellency, and I suggest that copy of this memorandum be immediately submitted for approval of the Governor-in-Council.

E. L. NEWCOMBE,
Deputy Minister of Justice.

(Approved 31 January, 1920.)

DEPARTMENT OF JUSTICE, OTTAWA, 26th January, 1920.

To His Excellency the Governor General in Council:—

The undersigned has had under consideration a Bill passed by the Legislative Assembly of the Province of British Columbia, entitled "An Act to amend the Vancouver Island Settlers' Rights Act, 1904", and reserved by His Honour the Lieutenant Governor for the signification of Your Excellency's pleasure on 29th March, 1919.

The substantial provision of this Bill is that Section 3 of the Vancouver Island Settlers' Rights Act, 1904, Chapter 54 of the Statutes of 1904, is amended by striking out the words "within twelve months from the coming in to force of this Act", in the second and third lines of the said section, and inserting in lieu thereof the words "on or before the first day of September, 1919", and with the substitution of 1919 for 1917, it is simply a re-enactment in terms of a statute of British Columbia, Chapter 71 of 7 & 8 George V, 1917, assented to on 19th May, 1917, and which was disallowed by Order of Your Excellency in Council of 30th May, 1918.

The proposed legislation is therefore clearly not sufficient for the policy of Your Excellency's Government as enunciated by the said Order-in-Council disallowing the former Act, and it is consequently not a measure which can receive the approval of Your Excellency's Government.

The undersigned therefore recommends that no action be taken upon this Bill, and that His Honour the Lieutenant Governor of British Columbia be informed that Your Excellency's Government has so determined.

Humbly submitted,
CHAS. J. DOHERTY,
Minister of Justice.

10 GEORGE V, 1920

(Approved 27 April, 1921)

DEPARTMENT OF JUSTICE, OTTAWA, 29th March, 1921.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of Legislature of British Columbia, passed in the tenth year of His Majesty's reign, 1920, and received by the Secretary of State for Canada on 28th April last, and he is of opinion that these

statutes may be left to such operation as they may have. There is included in the printed volume, Chapter 97 "An Act to amend the Vancouver Settlers' Rights Act, 1904" (assent reserved), which provides that "Section 3 of the 'Vancouver Island Settlers' Rights Act, 1904,' being Chapter 54 of the Statutes of 1904, is amended by striking out the words 'within twelve months from the coming into force of this Act' in the second and third lines of said section, and inserting in lieu thereof the words 'on or before the first day of September, 1920.'" This provision is simply a reproduction in terms, with substitution of dates, of a bill passed by the Legislative Assembly of British Columbia bearing the same title, and reserved by His Honour the Lieutenant Governor for the signification of Your Excellency's pleasure of 29th March, 1919. By Order in Council of 31st January, 1920, it is stated, referring to the latter bill, that the proposed legislation is clearly in conflict with the policy of Your Excellency's Government as enunciated by Order in Council of 30th May, 1918, disallowing a former statute of British Columbia, Chapter 71 of 1917, and that it was consequently not a measure which could receive the approval of Your Excellency's Government.

For the same reason the undersigned recommends that no action be taken upon the present bill, and that His Honour the Lieutenant Governor of British Columbia be informed that Your Excellency's Government has so determined.

The undersigned recommends moreover that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

PRINCE EDWARD ISLAND

59th VICTORIA, 1896

3RD SESSION—32ND GENERAL ASSEMBLY

(Approved 13 November, 1896)

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the Acts passed by the Legislature of the Province of Prince Edward Island in the fifty-ninth year of Her Majesty's reign (1896), received by the Secretary of State for Canada on 15th July, 1896, and he is of opinion that they may be left to their operation without any observations, with the exception of Chapter 8, which is the subject of a separate report.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

(Approved 13 November, 1896.)

DEPARTMENT OF JUSTICE, OTTAWA, 16th October, 1896.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon Chapter 8 of the Statutes of Prince Edward Island, passed in the fifty-ninth year of Her Majesty's reign (1896), assented to on the 30th of April last, and received by the Secretary of State for Canada on the 15th July, 1896, entitled "The Victoria Park Roadway Act, 1896."

It recites a Statute of the Legislature of Prince Edward Island, passed on the 29th April, 1876, by which it was enacted that a certain parcel of shore front of a width not exceeding one hundred feet should be vested in the City of Charlottetown for the purpose of a carriage or roadway to what is known as Victoria Park, which Statute was reserved by the then Lieutenant Governor of the Province for the consideration of His Excellency the Governor General, and afterwards duly assented to by the Governor General in Council.

The Statute further recites that litigation arose between the Province and the City as to boundaries of the parcel of land referred to in the above mentioned Statute: that judgment has been given by the Supreme Court of the Province in favour of the Lieutenant Governor, from which the City has appealed and that the appeal is still pending; that the City has consented to accept, in lieu of the land claimed by it under the Statute of 1876, a parcel of land bounded as set forth in the present Act, and it is enacted that the parcel of land so described shall be vested in the City in

fee simple for the purposes of a carriage or roadway from the Park to the City, and that the construction placed upon the Statute of 1878 by the Supreme Court is affirmed.

As this measure has already received the assent of the Lieutenant Governor of the Province, and as the reasons which led His Excellency the Governor General of the time to assent to the Statute of 1876 exist with regard to the present Act, the undersigned recommends that the Act be left to its operation.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

60th VICTORIA, 1897

4TH SESSION—32ND GENERAL ASSEMBLY

(Approved 4th November, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1897.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Prince Edward Island, passed in the sixtieth year of Her Majesty's reign (1897), received by the Secretary of State for Canada on the 16th of June, 1897, and he is of opinion that they may be left to their operation without any observations.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,

Minister of Justice.

61st VICTORIA, 1898

1ST SESSION—33RD GENERAL ASSEMBLY

DEPARTMENT OF JUSTICE, OTTAWA, 8th November, 1898.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Province of Prince Edward Island passed in the sixty-first year of Her Majesty's reign (1898), and received by the Secretary of State for Canada on 19th August, 1898, and he is of opinion that these statutes may be left to their operation without comment with the exception of chapter 3, intituled: "An Act to amend 'An Act respecting Witnesses and Evidence.'"

The undersigned has received a communication dated 30th May, 1898, from the Secretary of the Dominion Commercial Travellers' Association, enclosing a copy of a letter from the solicitors of the association at Charlottetown, P.E.I., in which it is stated by the association that the statute in question will be detrimental to the trade of the Dominion at large and make it almost impossible to collect payment for goods sold in the Province of Prince Edward Island, when, through ignorance

or otherwise, travellers who sold the goods within the province had failed to take out a license. The solicitors of the association in their letter state that the Act seems very objectionable on several grounds: that it will undoubtedly place difficulties in the way of collecting debts as well as increase the expenses of suitors; that the provision that a certificate under the hand of the Provincial Treasurer is to be sufficient evidence that the agent holds a license seems to be of little or no assistance, because under the Act imposing the tax the agent through whom the goods are sold is to take out the license, and not the firm for which he acts. They suppose a case in which a suit is brought at Charlottetown by a firm in Montreal for recovery of the price of goods sold by an agent, say A. B., in Charlottetown, and they state that while a certificate may be obtained that A. B. held a license, yet the certificate will not show that A. B. was the agent by whom the goods were sold, and that to prove the latter fact a witness must attend court or a commission must be issued to take evidence abroad. They further state that proof must be given of the date at which the goods were sold, so as to establish the fact that the agent at that particular time held a license, and this, even if the debtor had signed a note or accepted a bill for the price of the goods.

The undersigned has also received communications complaining of the hardship of this statute from the President of the Board of Trade of Toronto, the Halifax Board of Trade, the Maritime Commercial Travellers' Associations and from several other quarters. The Canadian Bankers' Association have also, through their solicitors, represented to Your Excellency's Government that this statute is awkwardly worded, and is open to a construction restricting the right of the holder in due course of a bill of exchange or promissory note transferred to him in the usual course of business to recover the amount thereof from the maker or endorser, unless the proof be given which the Act requires; that if such a construction is to be adopted the legislation is *ultra vires*, and that if such be not the intention the Act should be so amended as to make the intention clear.

The undersigned caused to be referred to the Attorney General of the province, copies of the communications received on behalf of the Dominion Commercial Travellers' Association and the Dominion Bankers' Association, in order that the Attorney General might submit his observations thereon for the consideration of Your Excellency's Government, and he has received a reply from the Attorney General in which he states in effect that chapter 4 of the Acts of Prince Edward Island, 1894, intituled "An Act to impose a direct tax on certain classes of traders," was left to its operation; that that Act has been ever since in force, and its provisions have been very well observed by every business house of repute without the province doing business therein; that it imposed a license fee of only fifteen dollars; that a number of traders and commercial travellers have repeatedly resorted to every kind of scheme to evade the payment of this small license fee, and that it was owing to these attempts to evade the law and in justice to those who promptly paid this annual tax that the present statute was passed. The Attorney General denies that the Act will be detrimental to the trade of the Dominion, and he states that it is clear from the reading of the Act that it is not intended to restrict the right of the holder in due course of a Bill or note. The Attorney General further contends that the legislation affects civil rights and matters of a merely local or private nature in the province, and that it comes within the authority of the Legislature to regulate the contracts of any particular business or trade in the province, and the conditions to which such contract shall be subject.

The undersigned observes that the Act of 1894, intituled "An Act to impose a direct tax on certain classes of traders," requires in effect that every trader not permanently residing within the province who, either in his own right or on behalf of any other person, sells any goods within the province, or solicits orders for goods within the province, shall, before selling such goods or soliciting orders therefor pay to the Provincial Treasurer an annual license fee of \$15, and a penalty of \$200 is imposed for breach of this requirement. It was pointed out in the approved report of the

Minister of Justice of the time, dated 24th December, 1894, that these provisions might be open to question in view of the exclusive authority of Parliament in matters affecting the regulation of trade and commerce, but the Act was not disallowed. The present Act prevents any creditor not permanently residing within the province from recovering the price of his goods from any person doing business within the province in the absence of proof that the creditor or the person who sold the goods for him had first taken out the license required by the Act of 1894, and this is so, whether the creditor is claiming upon the original contract of sale, or upon any promissory note or bill of exchange given for the price of the goods sold.

The undersigned apprehends that the power to regulate trade and commerce conferred upon Parliament must include, according to any limitation which may properly be placed thereon, the authority to regulate interprovincial trade, and this expression must be held to include trade between the residents of the different provinces. Hitherto, unless it may be incidentally, Parliament has not dealt with this subject, because, it must be assumed, Parliament has been satisfied with the conditions hitherto prevailing under which perfect freedom of trade has existed. The imposition of an annual license fee of \$15 by the Province of Prince Edward Island as against outside traders was a comparatively small matter, possibly justified under the power of taxation vested in the Provincial Legislature, and not—at all events, in the opinion of the advisers of His Excellency for the time being—calling for the exercise of the power of disallowance. The provisions of the Act now in question, however, seem to go beyond anything which can be implied in the power of taxation, and to impose a very burdensome restraint upon trade between other provinces and Prince Edward Island. It makes the right to recovery for goods sold to depend not only upon payment of the tax, but also upon the production of evidence that the tax has been paid and that the person directly engaged in the sale of the goods in question had procured a license as required by the Act of 1894. The difficulty and expense attendant upon such a proceeding is reasonably represented to be such as may seriously embarrass and discourage trade with Prince Edward Island. The undersigned entertains no doubt that Parliament might by competent legislation override the provisions both of the Act complained of and that of 1894, and it is a serious question, whether these Acts do not so far directly affect or appropriately belong to the regulation of trade and commerce as to exceed provincial authority even in the absence of Dominion legislation. The power of disallowance has, however, been vested in Your Excellency, not only for maintaining the constitutional lines of legislative authority, but also for preventing the provincial legislatures from interfering with Dominion policy in matters in which it is competent under the constitution to the Dominion Government to have a policy. There may be provincial legislation which can have effect until superseded by Parliament, and as to such the undersigned apprehends the power of disallowance may be properly exercised if the legislation be in the opinion of Your Excellency's Government prejudicial to Dominion interests. The statute now under consideration is in the opinion of the undersigned either *ultra vires*, or it falls within the class to which reference has just been made, not only for the reasons already mentioned, but because it may be held to prejudice the *bona fide* holders of the promissory notes and bills of exchange to which the Act refers.

For these reasons the undersigned recommends that said chapter 3 be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

NOTE.—No action was taken on this Report, because it was understood that a satisfactory amendment to the Act in question (Chap. 3) would be made by the Provincial Legislature.

The Act has been amended by 62 Vic., Chap. 19, of the Acts of P. E. Island, 1899.

62nd VICTORIA, 1899

2ND SESSION—33RD GENERAL ASSEMBLY

(Approved 14 December 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 11th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of Prince Edward Island, passed in the 62nd year of Her Majesty's reign (1899), and received by the Secretary of State for Canada on the 14th day of August, 1899, and he considers that these statutes may be left to their operation without comment with the exception of the following:—

Chapter 4. "An Act respecting the fisheries and the rights of Fishing in the province of Prince Edward Island."

Sections 15, 16 and 22, and possibly some other provisions of this Act, appear to affect somewhat the regulation of the fisheries, and, in so far as they have that effect, they are beyond the legislative jurisdiction of the province.

The undersigned does not consider, however, that this objection is of such a character as to justify the disallowance of the Act, particularly in view of the other unobjectionable provisions which it contains respecting the rights of property in the fisheries.

Chapter 19. "An Act to amend 61st Vic., chapter 3."

The Act amended by this statute was the subject of a report by the undersigned to Your Excellency in Council, dated 8th November, 1898, in which the undersigned, for the reasons stated in his said report, recommended the disallowance of the Act. The recommendation of the undersigned so made did not come into effect because it was understood that the Act would be amended by the provincial legislature, so as to remove the grounds of objection raised by the undersigned. Upon consideration of the amendment as enacted, it appears that these grounds of objection have been very largely, although not entirely, avoided. The Act as amended still affects to some extent the regulation of trade and commerce, and if the question were still open, the undersigned would think it necessary to consider whether the Act so far infringes upon Dominion authority as to justify its disallowance. The time has expired within which this authority could have been exercised, and inasmuch as the Act now in question leaves the law of Prince Edward Island, so far as it depends upon provincial statutes, in a better condition having regard to the freedom of trade than it previously stood, the undersigned considers that the present Act may be left to its operation.

Chapter 20. "An Act to amend An Act to impose a direct tax on certain classes of traders."

This Act is to some extent subject to remarks similar to those which have been made with regard to chapter 19. It requires traders not permanently residing within the province, but doing business there as commercial travellers, before entering upon their business within the province, to pay to the provincial treasurer an annual license fee or direct tax of \$20, and in case the goods to be sold consists of liquor, the license fee in to be \$200. The Act 57 Vic., chapter 4, contained the same provisions in effect except that the license fee was \$15 in all cases. That Act having been left to its operation, and not having been altered in principle by the amendment, although the amendment increases the license fee in ordinary cases by \$5, and in the case of liquor by \$185, the undersigned does not feel called upon to advise disallowance. Any question which may arise as to whether the law as it stands is competent to the legislature, may be conveniently determined by the courts. The question as to whether Your Excellency's government ought to interfere as a matter of policy is not so clearly

established, particularly in view of the course taken with respect to the original Act as to lead the undersigned to suppose that Your Excellency would exercise your authority upon that ground.

The undersigned therefore recommends that all these statutes be left to their operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

63rd VICTORIA, 1900

3RD SESSION—33RD GENERAL ASSEMBLY

(Approved 3 January, 1901)

DEPARTMENT OF JUSTICE, OTTAWA, 10th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the legislative assembly of the province of Prince Edward Island, passed in the sixty-third year of Her Majesty's reign (1900), and received by the Secretary of State for Canada on 11th October.

As to chapter 11, intituled "An Act to further amend 'An Act to consolidate and amend the several Acts incorporating the city of Charlottetown,'" the undersigned observes that the power conferred upon the city council to regulate and license traders not resident within the city is stated pretty broadly. The undersigned apprehends that this power can be acted upon only in so far as the regulations to be made under it relate strictly to property and civil rights or private and local matters within the province, and not to the regulation of trade and commerce, which is a subject of exclusive Dominion jurisdiction. The statute ought to be, and, having regard to the competence of the enacting authority, presumably will be, construed accordingly, and the undersigned recommends that it be left to such operation as it may have. The other statutes do not seem to call for any comment and may be left to their operation.

The undersigned recommends that a copy of this report, if approved, be transferred to the Lieutenant Governor of the province for the information of his government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

1 EDWARD VII, 1901

1ST SESSION—34TH GENERAL ASSEMBLY

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, December 31st, 1901.

These statutes were received by the Secretary of State for Canada on 30th July last. They may be left to their operation without comment except chapter 10, "An Act to impose taxes on certain life insurance agents," upon which a separate report will be made.

DAVID MILLS,

Minister of Justice.

(Approved 17 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 28th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 10, of the statutes of Prince Edward Island, I Edward VII, 1901, intituled: "An Act to impose taxes on certain life insurance agents."

The Act imposes upon travelling agents soliciting applications for insurance on behalf of life insurance companies, an annual tax or license fee of \$100, to be paid to the provincial secretary previous to such agent or person engaging in such business. It is expressly provided, however, that this requirement shall not apply to persons residing and having an office or fixed place of business within the province. A penalty is imposed for any person liable to the tax engaging in the business of soliciting applications for insurance, without having first paid the tax, and in any proceeding for the recovery of the penalty, proof of the fact of the person charged having solicited insurance as aforesaid is to be prima facie evidence of his guilt. This Act is intended, therefore, to discriminate directly in the business of life insurance against persons residing without the province. It may be questionable whether such legislation more appropriately falls within the classes of taxation which are assigned to the local legislatures, or to the regulation of trade and commerce which belongs to the Dominion; and which is certainly affected by provisions of this character. If as between these two, the Act is to be referred solely to the latter subject, it is *ultra vires* of the legislature, but assuming that it derives any force as an execution of the power of taxation vested in the legislature, it doubtless so far affects the regulation of trade as to entitle your Excellency's government to determine whether it is in the best interest of Canada that the Act should be allowed to stand.

The undersigned does not consider that the public interest is served by allowing unequal taxation within a province as between the residents of that province, and the residents of other provinces of the Dominion which may happen to be doing business there.

In a report of the undersigned dated 8th November, 1898, upon a statute of Prince Edward Island, he stated as follows:—"The power of disallowance has, however, been vested in Your Excellency, not only for maintaining the constitutional lines of legislative authority but also for preventing the provincial legislatures from interfering with Dominion policy in matters in which it is competent under the constitution of the Dominion government to have a policy. There may be provincial legislation which can have effect until superseded by parliament, and as to such the undersigned apprehends the power of disallowance may be properly exercised, if the legislation be in the opinion of Your Excellency's government prejudicial to Dominion interests. The statute now under consideration is, in the opinion of the undersigned, either *ultra vires*, or it falls within the class to which reference has just been made." These remarks apply equally to the statute now in question. The undersigned observes, however, that the statute is general in its application, except as to residents of the province, and it may be aimed at some particular class in whose interest Your Excellency's government would not think proper to interfere. The statute may be susceptible to amendment, which, while working out the object of the legislation; may not seriously interfere with the residents of other provinces. The undersigned does not, therefore, at present recommend disallowance, but he desires that the provincial government should be asked to explain the object of this legislation and the reason for imposing a tax upon non-residents, to which residents of the province are not made subject in respect of the same business. The local government should also be asked to state whether consistently with their policy, the Act may be so amended as to exempt from its operation the residents of other provinces of Canada. Upon receiving the provincial report the undersigned will give the matter further consideration.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Approved 1 April, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 4th March, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to the report of his predecessor in office, approved by Your Excellency on 17th January last, with respect to chapter 10 of the statutes of Prince Edward Island, 1 Edward VII, 1901, intituled: "An Act to impose taxes on certain life insurance agents," has had under consideration the despatches of the Lieutenant Governor of Prince Edward Island of 3rd and 19th February last, with the reports therein referred to of the Attorney General of the province, who calls attention to the provincial Act, 63 Victoria, chapter 6, section 1 (3), by which insurance companies and associations having agencies or accepting risks upon the lives of persons within the province, and transacting the business of life or endowment insurance therein, whose principal office or organization is not within the province, are required to pay annually a tax of \$225 each. This provision is cited by the Attorney General as a reason for the later Act now in question. It is said that every company with a resident agent in the province has paid the tax willingly, but that those non-resident agents of companies having no established agency in the province have come in and obtained insurance and business without contributing to the provincial revenue, and that the statute was passed not to discriminate between the provinces, but to compel such non-resident insurance agents to contribute as other insurance companies do towards the taxes of the provinces.

The undersigned observes that the requirements of the Act of 63 Victoria is not limited to insurance companies having agencies established within the province, and that although companies whose principal office or organization is within the province are not subject to the payment of the tax, yet all other insurance companies accepting life risks are made liable to payment of the tax, in so far as the legislature has authority to create such a liability, and, therefore, the Act of 1 Edward VII, which imposes upon travelling agents an annual tax or license fee of \$100, may in some cases apply to the companies which are already taxed under the Act of 63 Victoria. Since, however, the time has gone by for disallowing the former Act, and since it is stated by the Attorney General, and is probably in most cases true, that the later Act will tend to equalize taxation as between corporations having resident agents and those having non-resident agents, the undersigned does not feel inclined to recommend disallowance. No doubt both these Acts discriminate against companies or individuals established or residing outside of the province, and this is a policy which as stated in the report of the late Minister above referred to, is not favoured by Your Excellency's government. If it were open at the present time to disallow both these Acts, the undersigned would consider further the propriety of making such a recommendation, but as it is only the later one which is now in question, and as both Acts are subject to objection of the same nature, the former having been allowed to remain in operation, and for the other reasons mentioned, the undersigned considers that the said Act of 1 Edward VII, may be left to such operation as it may have. He recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Prince Edward Island for the information of his government.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

2 EDWARD VII, 1902

2ND SESSION—34TH GENERAL ASSEMBLY

(Approved 12 December, 1902)

DEPARTMENT OF JUSTICE, November 24th, 1902.

These statutes were received by the Secretary of State for Canada on 28th July last, and they may be left to their operation without comment.

C. FITZPATRICK,
Minister of Justice.

3 EDWARD VII, 1903

3RD SESSION—34TH GENERAL ASSEMBLY.

(Approved 23 March, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, January 8th 1904.

3 Edward VII.—Received by the Secretary of State for Canada 16th December, 1903.

Chapter 17, intituled "An Act to consolidate and amend the several Acts incorporating the city of Charlottetown," and

Chapter 18, intituled "An Act to consolidate and further amend the Acts incorporating the town of Summerside."

The councils of the city of Charlottetown and the town of Summerside are by these Acts empowered to make bylaws with respect to various matters enumerated. Some of these powers may be construed as in excess of provincial authority, because they relate to the criminal law or other subjects within the exclusive jurisdiction of the Dominion. The undersigned considers, however, that such questions, as they arise, may be determined by the courts, and that these Acts may be left to their operation.

Chapter 28, intituled "An Act to alter the provisions of the wills of William and George Douglas."

The undersigned is not at present prepared to make any recommendation upon this Act, inasmuch as there is some correspondence before him which he understands raises an objection to it by a person interested in the estate of William or George Douglas and the undersigned proposes to make further inquiry.

The undersigned accordingly recommends that the Acts above mentioned or referred to be left to such operations as they may have, except chapter 28.

C. FITZPATRICK,
Minister of Justice.

(Approved 19 April, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 13th April, 1904.

To His Excellency the Governor General in Council:

With regard to an Act of the province of Prince Edward Island passed in the year 1903, being chapter 28, intituled: "An Act to alter the provisions of the wills of William and George Douglas," the undersigned has the honour to report that upon

further inquiry it appears that the objections raised to this statute are not such as would justify Your Excellency in exercising the power of disallowance.

He recommends, therefore, that the Act be left to its operation.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

4 EDWARD VII, 1904

(Approved 16 November, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 29th October, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the statutes of the several provinces, passed at the last sessions of the legislatures thereof (1904), as follows:—

* * * * *

Prince Edward Island; 4 Edward VII.; received by the Secretary of State on 27th June, 1904.

These statutes may be left to their operation without comment except chapter 14, intituled: "An Act to incorporate 'The Maritime Steamship Company'," as to which the undersigned observes that the powers of the company are too broadly stated.

By section 2 the company may build, acquire and work steamships and other vessels to convey goods and passengers between such ports as may seem expedient, and generally to carry on the business of ship-owning in all its branches. If these powers are intended to enable the company to run steamships or other vessels between Prince Edward Island and any other province, or to extend the business of the company beyond the limits of the province, they are beyond the authority of a provincial legislature to grant. The Act should be amended so as expressly to confine the business of the company within the limits of the province, and the undersigned recommends that the attention of the Provincial Government be called to this statute so that it may promote the required legislation at the next sitting of the legislature.

The undersigned recommends that a copy of this report, if approved, so far as it relates to each province, shall be communicated to the Lieutenant Governor of the Province.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

5 EDWARD VII, 1905

(Approved 21 September, 1906.)

DEPARTMENT OF JUSTICE, OTTAWA, August 31, 1906.

To His Excellency the Governor General in Council:

The undersigned having considered the Statutes of the Legislative Assembly of the province of Prince Edward Island, passed in the fifth year of His Majesty's reign, 1905, and received by the Secretary of State for Canada on November 9th, 1906, has the honour to report that these may be left to such operation as they may have, and he recommends that the Lieutenant Governor of the province be informed accordingly.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

6 EDWARD VII, 1906

(Approved 28 May, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, May 22, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Acts of the Legislative Assembly of Prince Edward Island, passed in the sixth year of His Majesty's reign, 1906, and received by the Secretary of State for Canada on July 2nd last, and is of opinion that these may be left to such operation as they may have, except

Chapter 2, intituled "An Act respecting the Oyster Fisheries of Prince Edward Island."

This Act recites the expediency of undertaking measures for the leasing or granting of areas or plots in the bottoms of the bays, rivers, harbours and creeks of Prince Edward Island for the purpose of cultivating oysters and other shell fish, and it authorizes the Lieutenant Governor to cause surveys of these beds to be made and to grant leases thereof in areas not exceeding five acres to any one person. It is provided that all oysters planted, bedded, deposited, sown or grown on lands so leased shall be the personal property of the individual holding the lease. There are further provisions for surveys and guardians, and the placing of stakes and marks, &c.

This Act, therefore, must be held to assume a proprietary interest in the province of the bays, rivers, harbours or creeks mentioned in the Act. The public harbours, however, belong to the Dominion, and as a part of the public property of Canada, are not subject to the legislative jurisdiction of the province; consequently this Act is *ultra vires*, so far as concerns the beds of any water which would pass under the description of a public harbour, and it may on that account be embarrassing.

The undersigned recommends, therefore that the Lieutenant Governor of Prince Edward Island be asked to report immediately as to whether his Government will undertake to have this Act amended at the next session of the legislature withdrawing from its operation public harbours.

Chapter 37, intituled 'An Act to incorporate "R. T. Holman, Limited."'

This Act incorporates a company with power to carry on a general wholesale and retail merchantile business and a general milling and manufacturing business in flour, feed, clothing, white wear, &c.

The exercise of the powers conferred are not by the terms of the Act limited to the province of Prince Edward Island, but on the contrary it is provided that the company may purchase, own, hold, lease, acquire, construct, mortgage and sell, or otherwise dispose of, lands and real estate in the province of Prince Edward Island, or in the Dominion of Canada, and it may invest moneys of the company on mortgages, judgments or other securities on real estate in the province of Prince Edward Island, or in the Dominion of Canada. The company is also authorized to establish one or more branch places of business, mills or factories in any city, town, village or place within the province of Prince Edward Island, or in the Dominion of Canada, necessary or incidental to any of the purposes for which the company is incorporated. The company is further authorized to transact any business out of the province necessary or incidental to any of the purposes for which the company is incorporated.

Inasmuch as a provincial legislature has with relation to the incorporation of companies authority only to incorporate for provincial purposes, and inasmuch as it is incompetent to a provincial legislature to authorize a company to carry on business beyond the limits of the province, this statute as it stands must be regarded as *ultra vires* of the legislature.

It may, of course, be amended by striking out the provisions referred to, with respect to the acquisition and disposal of lands, investment of moneys and carrying

on business in other parts of the Dominion, and by expressly limiting the business of the company to the Province of Prince Edward Island, otherwise the undersigned would deem it his duty to recommend the disallowance of this Act.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Prince Edward Island, for the information of his Government, and that the Lieutenant Governor be asked to inform Your Excellency's Government as soon as possible and within the time limited for disallowance as to whether the said Chapters 2 and 37 will be amended to the effect in this report suggested at the next session of the legislature.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

Transmitted to Secretary of State by the Lieutenant Governor, 17 June, 1907

Inclosure.

CHARLOTTETOWN, P.E.I., June 15, 1907.

SIR,—I have yours of the 11th instant.

The objections to our Act regarding 'The Oyster Fisheries of Prince Edward Island' as shown by the Report of the Minister of Justice as far as I can gather, are shortly these:

1st. That this Act must be held to assume a proprietary interest in the Province of the bays, rivers, harbours or creeks situated therein.

In answer to this objection I may say that this Province claims, has claimed and will claim a proprietary interest and property in the bottoms of the bays, rivers, harbours and creeks situated therein. This is given the Province under the terms of the British North America Act and the decision of the Privy Council construing the rights of the Provinces and of the Federal Government.

The Minister of Justice in his report to your Honour seems to think that under this Act as proposed, the Province seeks to claim part of the Public Harbours. If the Minister will read more carefully the words of the Act, he will find that the word 'Public' Harbour is not mentioned in the proposed Act and the mere use of the word 'Harbour' does not and cannot include a Public Harbour. The expression 'Public Harbour' is clearly defined by the decisions on this point, which I trust the Minister of Justice is fully cognizant of.

As the objection of the Minister of Justice is to the use in the Act of the expression 'public harbours' and as that expression does not appear in the Act at all, it is not necessary further to consider the question or to report thereon.

The suggestion of the Minister of Justice that if your government would consent and undertake to have the Act complained of, amended next session by leaving out the words 'public harbours' is uncalled for, first, because these words do not appear in the Act at all, and secondly, if they did, your government or any government could or would not give such an undertaking as they could not be sure that the next legislature would comply with such undertaking, each legislature when it meets being supreme and having the right to legislate without regard to any undertakings or promises made by the government of the day.

I am, yours respectfully,

ARTHUR PETERS.

His Honour the Lieutenant Governor.

(Telegram.)

Ottawa, June 20, 1907.

Lieutenant Governor of
Prince Edward Island,
Charlottetown, P.E.I.

Re chapter 2, respecting oyster fisheries of Prince Edward Island. Inasmuch as your government denies the application of this Act to public harbours, and in the view of His Excellency's government the word 'harbours,' as used in the Act without qualification, is broad enough to include and does include 'public harbours,' will your government to avoid the inconvenience of disallowance undertake to introduce and support legislation at the next session providing that nothing in the Act is intended to affect any public harbour. Please telegraph answer.

P. Pelletier,
Acting Under-Secretary of State.

(Telegram.)

Charlottetown, P.E.I., June 21, 1907.

Secretary of State,
Ottawa, Ont.

Referring telegram twentieth my govt, to avoid inconvenience of disallowance will undertake to introduce and support legislation providing that nothing in the Act is intended to affect public harbours.

D. A. McKinnon.

(Approved 1 July, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, June 29, 1907.

To His Excellency the Governor General in Council:

Referring to his approved report of the 22nd May, 1907, upon the Acts of the Legislative Assembly of the Province of Prince Edward Island of 1906, the undersigned has the honour to report that after some correspondence with the provincial authorities touching the two chapters of the said Acts to which objection was taken in the said report, namely, chapter 2, intituled 'An Act respecting the Oyster Fisheries of Prince Edward Island,' and chapter 37 intituled 'An Act to incorporate R. T. Holman, Limited,' the Secretary of State is in receipt of a telegram, dated the 21st inst., from the Lieutenant Governor of the Province stating in effect that his government will undertake to introduce and support legislation providing that nothing in the Act, chapter 2, is intended to affect public harbours, and of a further telegram dated 27th inst., stating that the Provincial Government will have chapter 37 amended to the satisfaction of the Minister of Justice.

The legislation thus promised would remove the objections taken by your Excellency's Government to the Acts in question, and the undersigned is of the opinion that they may properly be left to their operation in view of the undertaking of the Government of the Province, and he recommends accordingly.

The undersigned further recommends that a copy of this report, if it is approved, be communicated to the Lieutenant Governor of the Province for the information of his government.

Humbly submitted,
A. B. AYLESWORTH,
Minister of Justice.

7 EDWARD VII, 1907

(Approved 21 May, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, 7th December, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of the Province of Prince Edward Island, passed in the seventh year of His Majesty's reign, 1907, and received by the Secretary of State for Canada on 13th June last, and he is of the opinion that these may be left to such operation as they may have, except the following:—

Chapter 30, intituled "An Act to incorporate 'Cardigan Lumber Company, Limited'".

This Act incorporates a Company with power to carry on a general wholesale and retail mercantile business—to erect and operate mills, and to acquire, use, mortgage, sell and dispose of vessels; also to conduct and carry on a general agency for all kinds of insurance companies, mining companies, railway corporations, manufacturers, and generally to represent any person, firm or corporation carrying on any business, and to conduct the general business of commission merchants, etc.

It is expressly provided that the Company may purchase, own, hold, lease, acquire, mortgage, sell or otherwise dispose of lands and real estate in the Province of Prince Edward Island *or in the Dominion of Canada*.

The company is also authorized to invest moneys of the company on mortgages, judgments or other securities on real or personal estate in the Province of Prince Edward Island *or elsewhere in the Dominion of Canada*.

The Act further provides that the Company may establish one or more branch place or places of business, mills or factories at any place or places within the Province of Prince Edward Island *or elsewhere in the Dominion of Canada* as it may deem necessary.

The Company is expressly authorized also to transact any business out of the province necessary or incidental to any of the purposes for which the Company is incorporated.

Chapter 34, intituled "An Act to incorporate 'Joseph Read and Company, Limited'".

Chapter 35, intituled "An Act to incorporate 'J. M. Clark and Company, Limited'".

Chapter 36, intituled "An Act to incorporate 'Morson and Company, Limited'".

Chapter 37, intituled "An Act to incorporate 'The Beer Insurance Agencies, Limited'"; and

Chapter 38, intituled "An Act to incorporate 'The F. B. MacRae Company, Limited'".

Each of these chapters contain enactments professing to confer powers to carry on business outside of the Province similar to those of Chapter 30 above set out.

Chapter 33, intituled "An Act to incorporate 'Lord's Company, Limited'".

By this Act the Company is incorporated with power to carry on a general whole-sale and retail mercantile business, and with other powers, and it is provided by section 12, that the Company is authorized to transact any business out of the Province necessary and incidental to any of the purposes for which the Company is incorporated.

A local legislature has, in the opinion of the undersigned, no authority to confer extra-provincial powers. Its legislative capacity with regard to the constitution of companies is limited to the incorporation of Companies with provincial objects.

In reviewing the legislation of Prince Edward Island of 1906 the undersigned had occasion to refer specially to Chapter 37, intituled "An Act to incorporate R. T.

Holman, Limited," which contained enactments attempting to confer extra-provincial powers very similar to those above mentioned, and that Act was only saved from disallowance by the undertaking of the Lieutenant Governor given by telegram dated 27th June last, promising to have the Act amended by striking out these *ultra vires* clauses at the next session of the legislature, and by expressly limiting the business of the Company to the Province of Prince Edward Island.

The undersigned would deem it his duty to recommend disallowance of these Acts unless satisfactory assurance is given that they will be amended in like manner within the time limited for disallowance.

The undersigned recommends that a copy of this report, if approved, be despatched without delay to the Lieutenant Governor for the information of his Government, and, since the time for disallowance is just expiring, that the Lieutenant Governor be asked to inform Your Excellency's Government immediately by telegraph as to whether these Acts will be amended at the next ensuing session of the legislature by repealing the clauses with regard to extra-provincial powers, and by expressly limiting the business of these companies to the Province of Prince Edward Island.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

Order in Council 12 June, 1908, P. C. 1310.

The Committee of the Privy Council have had under consideration a Report dated 2nd, June, 1908, from the Minister of Justice, stating with reference to the Order in Council of the 21st May, 1908, upon the Statutes of Prince Edward Island, 1907, in which it is recommended that the Lieutenant Governor be asked to inform Your Excellency's Government immediately by telegraph as to whether Chapters 30, 33, 34, 35, 36, 37, and 38 would be amended at the next session of the Legislature by repealing the clauses with regard to extra-provincial powers and by expressly limiting to the Province of Prince Edward Island the business of the companies incorporated by these Acts, that the Lieutenant Governor of Prince Edward Island has now telegraphed to the Secretary of State as follows:—"With reference to Statutes of Prince Edward Island passed in nineteen hundred and seven particulars set forth as objected to in Minister Justice's report annexed to Minute of Council twenty-first instant, my Government undertakes to recommend to Legislature next ensuing session the repeal of the parts of the several Acts objected to in the said Report."

The Minister considering that the said telegram of the Lieutenant Governor may be accepted as a satisfactory assurance, recommends that subject to the undertaking of the local Government for the repeal of the provisions in question these Acts be left to such operation as they may have.

The committee, concurring, recommend that the Lieutenant Governor of Prince Edward Island be informed accordingly.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

8 EDWARD VII, 1908

(Approved 16 November, 1908.)

DEPARTMENT OF JUSTICE, OTTAWA, October, 15, 1908.

To His Excellency The Governor General in Council:—

The undersigned has had under consideration the statutes of the Legislature of PRINCE EDWARD ISLAND passed in the Eighth year of His Majesty's reign, (1908)

received by the Secretary of State for Canada on 4th August last, and he is of opinion that these may be left to such operation as they may have.

The undersigned desires to observe, however, as to Chapter 12, intituled, "An Act to amend 'An Act to provide for the payment of Succession Duties in certain cases,'" that this Act appears to have assumed a power in the Legislature to tax property situated outside of the Province,—a power which certainly does not exist. It will, however, be quite convenient for the Courts to consider and determine any question which may be raised as to the application of validity of this statute.

Chapter 13, intituled "An Act to prohibit the use of Motor Vehicles upon the public highways of this Province."

The principal enactment of this statute is that no person shall use or operate upon a public highway in the Province any motor vehicle.

There has been referred to the undersigned copy of a petition of certain residents of Prince Edward Island, owners of automobiles; also copy of petition of the Charlottetown Automobile Company, Limited, both praying for disallowance upon the ground that the legislation is oppressive and unjust, and in excess of local legislative authority. The undersigned has also received letters complaining of this statute.

Your Excellency's Government, for reasons which have been often stated, is not concerned with any question as to the propriety or expediency of this statute. Its effect is merely to prohibit the use of motor vehicles upon the public highways of the Province, and the power to do this is, in the opinion of the undersigned, unquestionably vested in the Legislature.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Prince Edward Island for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH.

Minister of Justice.

9 EDWARD VII, 1909

(Approved 16 November, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, 9th November, 1909.

To His Excellency The Governor General in Council:—

The undersigned has had under consideration the Statutes of the legislature of PRINCE EDWARD ISLAND, passed in the ninth year of His Majesty's reign, 1909, and received by the Secretary of State for Canada on 21st May last, and he is of opinion that these statutes may be left to such operation as they may have. It is, in the view of the undersigned, questionable, however, whether the legislature had authority to enact—

Chapter 7, intituled "An Act to prohibit the soliciting of orders for intoxicating liquors," in so far as it purports to prohibit the taking of orders or soliciting or canvassing for orders for the sale, exchange or purchase of liquor to be imported or brought into the province.

It is, the undersigned conceives, not competent to a provincial legislature to prohibit inter-provincial trade or the importation or bringing into the province of articles which may be the subject of trade.

The undersigned is of opinion, however, that any question which may arise as to the validity of this statute may be conveniently left to the determination of the courts.

The undersigned recommends that a copy of this report, if approved be transmitted to the Lieutenant Governor of Prince Edward Island, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

1910 and 1911

Reports on Statutes for the years 1910 and 1911 for Prince Edward Island approved by the Governor in Council contain no comments: the statutes are left to such operation as they may have.

2 GEORGE V., 1912

(Approved 24 April 1913)

DEPARTMENT OF JUSTICE, OTTAWA, 17th April, 1913.

To His Excellency the Administrator of the Government in Council:

The undersigned has had under consideration the Statutes of the Legislature of Prince Edward Island for the year 1912, received by the Secretary of State for Canada on 21st November last, and he is of opinion that these statutes may be left to such operation as they may have, with the exception of:—

Chapter 45, intituled: "An Act to incorporate the Dominion Fox Breeding Company of Murray Harbour, Limited"; and

Chapter 50, intituled: "An Act to Incorporate the Maritime Black and Silver Fox Company, Limited".

Each of these statutes contains provisions in section 2 authorizing the Company to acquire, use and dispose of real estate in Canada, and to invest money on mortgages or other securities on real estate in Canada.

These powers, in so far as they are intended to authorize the Company to deal in lands or real estate securities outside of Prince Edward Island are, in the opinion of the undersigned, *ultra vires*. There are several other Acts of incorporation in this volume conferring identical powers, except that the words "Prince Edward Island" occur in them in the place of the word "Canada". It seems to the undersigned therefore that in these two Acts it must be the intention to authorize the companies to carry on real estate business in other parts of Canada than Prince Edward Island. The undersigned considers therefore that these two statutes should be amended by substituting "Prince Edward Island" for "Canada" in the provisions mentioned, and he recommends that enquiry be made of the Lieutenant Governor to ascertain whether his Government will promote the necessary legislation within the time limited for disallowance.

The undersigned recommends moreover that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Prince Edward Island, for the information of his Government.

Humbly submitted,

CHAS. H. DOHERTY,
Minister of Justice.

1913—1920

Reports on Statutes for the years 1913 to 1920, both inclusive, for Prince Edward Island approved by the Governor in Council contain no comments; the Statutes are left to such operation as they may have.

SASKATCHEWAN.

6 EDWARD VII, 1906

(Approved 28 May, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, 22nd December, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of the Province of Saskatchewan, passed in the sixth year of His Majesty's reign (1906), and received by the Secretary of State for Canada on 25th June last, and he is of opinion that these may be left to such operation as they may have, subject to the following comments:—

Chapter 24, intituled "An Act respecting land in the Province of Saskatchewan."

By section 55 it is provided that whenever it is made to appear to the satisfaction of the registrar that in any plan heretofore filed by the Department of Public Works of the Northwest Territories or by the Department of the Interior of Canada, and registered as hereinbefore provided, manifest, technical or other errors have intervened, the registrar shall permit such plan to be withdrawn by the Department of Public Works of the province and a corrected plan to be substituted therefor.

This section should be amended by striking out the reference therein to plans filed by the Department of the Interior of Canada, inasmuch as the local assembly has no jurisdiction to provide for the withdrawal or correction of any such plans.

Section 76 provides that the land mentioned in any certificate of title granted under this Act shall, by implication and without any special mention therein, unless the contrary is expressly declared, be subject to, among other things, any right of way or other easement granted or acquired under the provisions of the Northwest Irrigation Act.

This provision should be enlarged so as to make the title under the certificate subject also to the rights of way and easements granted under the provisions of the Northwest Irrigation Act, 1898.

The undersigned entertains no doubt that the Provincial Government will promote amendments as above suggested to these sections at the next session of the legislature, and recommends that the attention of the Lieutenant Governor be drawn to the matter with that end in view.

Chapter 55, intituled "An Act to incorporate the Saskatchewan Insurance Company."

This company is incorporated for the purpose of effecting insurance against loss by fire, lightning and hailstorms, accidents and casualties, but the exercise of its powers are not expressly limited, as in the opinion of the undersigned they should be, to the Province of Saskatchewan. It is desirable, in the opinion of the undersigned, that the Provincial Government should see that such an amendment is made.

Chapter 58, intituled "An Act to incorporate the Saskatchewan and Alberta Railway Company."

Chapter 59, intituled "An Act to incorporate the Regina and Saskatchewan Railway Company."

Chapter 60, intituled "An Act to incorporate the Canadian Central Railway Company."

Chapter 61, intituled "An Act to incorporate the Saskatchewan Central Railway Company."

Each of these Acts incorporates a company with power to build a railway to the boundaries of the province, either interprovincial or international, or both.

The power of a provincial legislature to authorize local works or undertakings such as railways extending to the boundaries of the province has been doubted, but the undersigned does not consider it necessary in the present circumstances to do more than call attention to the views which have been heretofore expressed upon this subject.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Saskatchewan, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

7 EDWARD VII, 1907

(Approved 17 October, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, 11th October, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Saskatchewan, passed in the Seventh year of His Majesty's reign, 1907, and received by the Secretary of State for Canada on 13th March, and 22nd April; and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned observes that by chapter 42, intituled "An Act to incorporate The Commercial Trust Company," a company is incorporated for the purpose of carrying on generally an estate and trust business, and the execution of these powers is not expressly limited, as in the opinion of the undersigned it ought to be, to the Province of Saskatchewan. Considering, however, that the Act must be construed as not conferring powers which are in excess of the authority of the legislature to grant, the undersigned does not recommend the exercise of the power of disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Saskatchewan, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

8 EDWARD VII, 1908

(Approved 22 June, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, 10th June, 1909.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Saskatchewan, passed in the eighth year of His Majesty's reign, 1908, and received by the Secretary of State for Canada on the 20th July last, and he is of opinion that these statutes may be left to such operation as they may have except chapter 50, "An Act to incorporate the Hudson Bay Insurance Company."

This Act incorporates an insurance company with general powers, and it is provided by the third section that "the head office of the company shall be in the City of Moose Jaw, in the Province of Saskatchewan; but branch offices, sub-boards or agencies may be established and maintained either in said province or elsewhere in such manner as the directors from time to time direct; said head office, however, may be changed from time to time to such other place as may by the directors be designated by by-law."

The undersigned is unable to interpret the power thus conferred upon the company to establish branch offices and agencies elsewhere than in the province otherwise than as intended to authorize the company to transact a business unlimited as to locality. Such a power, as has been frequently stated by Your Excellency's advisers, seems to be in excess of provincial objects, to which purposes alone the authority of a local legislature for incorporating companies is by section 92 of the British North America Act, 1867, restricted.

The undersigned considers, therefore, that in accordance with the practice in former cases this statute should be disallowed unless the local Government undertake to promote legislation at the next session of the legislature to repeal the power professed to be granted to the company to establish agencies or to do business elsewhere than in the province.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Saskatchewan, and that he be requested to inform Your Excellency's Government immediately whether his Government will undertake for the amendment herein suggested.

Humbly submitted,

CHAS. MURPHY,
Acting Minister of Justice.

(Telegraph)

REGINA, SASK., July 9, 1909.

The Under-Secretary of State for Canada,
Ottawa.

My Government undertakes to promote legislation to amend chapter fifty of statutes of nineteen hundred and eight being act to incorporate the Hudson Bay Insurance Company in the manner indicated your letter twenty-fifth ultimo and order in council referred to therein.

A. E. FORGET,
Lieut.-Governor.

(In consequence of above telegraphic despatch the Act was left to its operation. Order in Council of 29 July, 1909.)

INSTITUTE OF CHARTERED ACCOUNTANTS,
MOORGATE PLACE, LONDON, E.C.,
30th September, 1908.

SIR,—I have the honour to acknowledge, with thanks, the receipt of your letter of the 25th instant enclosing for consideration a copy of an Act incorporating the Institute of Chartered Accountants of Saskatchewan.

The matter has been under the consideration of the Parliamentary and Law Committee, who can only again express their regret at the passing of another Act of this description.

Remembering the opinions the Earl of Crewe and his predecessor in Office have already expressed on this subject, the Committee venture to hope that His Lordship

will see his way to communicate with the Governor of the Colony in question in order that the name of incorporation may be changed, as was in effect done in Newfoundland in 1906.

No Charter having been granted, it seems quite improper that the expression "Chartered" should have been adopted, and I would again point out that with the continued multiplication of Institutes bearing this name there is a great risk that the day may come when their members may commence to practice in this country under the name of "Chartered Accountant", a state of things which must inevitably lead to confusion on the part of the English public and be against their interest.

I am returning per parcel post the volume of Statutes, which you kindly forwarded to me.

I am, etc.,

GEORGE COLVILLE,
Secretary.

The Under Secretary of State,
Colonial Office.

From Lord Crewe to Lord Grey

DOWNING STREET, 6th October, 1908.

MY LORD,—With reference to my despatch No. 392 of the 3rd of July, I have the honour to transmit to your Excellency, to be laid before your Ministers, the accompanying copy of a letter from the Institute of Chartered Accountants, on the subject of an Act, 8 Edward VII, chapter 55, of the Legislature of the Province of Saskatchewan, incorporating the Institute of Chartered Accountants of Saskatchewan.

2. Your Ministers will observe that, under section 13 of the Act, it is provided that it shall not be competent for any person who is not a member of the said Institute to pretend to hold, take or use any name, title, addition or description implying that he holds a diploma or certificate from the said Institute, and that the Institute, by section 5, is entitled to grant diplomas to the members of the Institute, enabling them to use the distinguishing letters "C.A.". It would therefore appear that a member of the Institute of Chartered Accountants in England may be penalized under these sections for the use of the letters "C.A." in Saskatchewan.

3. Your Ministers are familiar, from the correspondence, to which reference has been made above, with the views held by His Majesty's Government as to the propriety of the creation of Institutes of *Chartered* Accountants by Provincial Acts, and I should be grateful if you would be so good as to request the earnest attention of your Ministers to this matter, with a view to securing the alteration of the Saskatchewan Act.

I am, etc.,

CREWE.

Order in Council, 16 November, 1908, P.C. 2430M.

The Committee of the Privy Council have had under consideration a despatch, dated 6th October, 1908, from the Right Honourable the Principal Secretary of State from the colonies, transmitting copy of a letter from the Institute of Chartered Accountants, on the subject of an Act, 8 Edward VII, Chapter 55, of the Legislature of the Province of Saskatchewan, incorporating the Institute of Chartered Accountants of Saskatchewan.

The Secretary of State, to whom the despatch and enclosure were referred, submits copy of a self-explanatory reply in the premises from His Honour the Lieutenant

Governor of Saskatchewan, after consideration by his Ministers of the full tenour of the documents above indicated and of certain collateral correspondence referring in this regard to the Provinces of Ontario and Quebec, respectively, and to the Colony of Newfoundland.

The Committee, on the recommendation of the Secretary of State, advise,—as the despatch of the Lieutenant Governor would appear to meet all the exigencies of the case stated by the Institute of Chartered Accountants of England and Wales,—that Your Excellency may be pleased to transmit a copy of this Minute and of the despatch from the Lieutenant Governor of Saskatchewan, above mentioned, to the Right Honourable the Principal Secretary of State for the Colonies for the information of the said Institute.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

GOVERNMENT HOUSE, REGINA, 4 November, 1908.

SIR,—With reference to your despatch of the 26th ultimo, W.S. 1555 respecting the comments made by the Right Honourable the Secretary of State for the Colonies upon the Act of the Legislature of Saskatchewan, 8 Edward VII, Chapter 55, incorporating the Institute of Chartered Accountants of this Province, I have the honour to advise you for the information of His Excellency that the interpretation placed upon those parts of section 5 and 13 of the said Act quoted by Lord Crewe is not that given to those sections by my Ministers. It is held here that the letters "C.A." simply indicate the possession, on the part of the person using them after his name, of certain attainments qualifying him to undertake work of a particular description. These qualifications it is well understood, are possessed by the members of a number of Institutions throughout the Empire similar to that under consideration, and it is thought that the prohibition of the use of the distinguishing letters by the Legislature of Saskatchewan could only apply where it was sought to create the impression that membership in the Saskatchewan Institute was thereby signified.

My Ministers state, however, that if any difficulty should arise as a result of the enactment under consideration that they will be prepared to propose such amendments to the Legislative Assembly as shall remove all reasonable ground of complaint.

I have the honour to be, Sir,

Your obedient servant,

A. E. FORGET,

Lieutenant-Governor.

The Honourable
The Secretary of State,
Ottawa, Canada.

8-9 EDWARD VII, 1908-9

(Approved 12 May, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, 29th April, 1909.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Saskatchewan, passed in the 8th and 9th years of His Majesty's reign, 1908-9, received by the Secretary of State for Canada on the 6th March last,

and he is of the opinion that these statutes may be left to such operation as they may have.

The undersigned observes that Chapter 18, intituled "An Act to incorporate the Saskatchewan North-Western Railway Company" provides, among other things, that the Company may lay out, construct and operate lines of railway

(a) From a point on or near the authorized line of the Canadian Northern Railway between Prince Albert and Battleford, thence northerly to a point on or near Crooked Lake;

(b) From a point on the Qu'Appelle, Long Lake and Saskatchewan Railroad and Steamboat Company's Line between Aylesbury and Davidson, thence in a generally northerly and westerly direction to the provincial boundary;

(c) From a point on the Canadian Northern Railway between Kaiser and the eastern boundary of the province, thence in a generally westerly direction to the western boundary of the province south of the Saskatchewan river;

(d) From a point in or near Moose Jaw, thence in a generally southerly and easterly direction to the International boundary;

(e) From a point between ranges one and twelve west second meridian on or near the authorized line of the Canadian Northern Railway, thence in a generally southerly direction to or near the Souris coal fields and the International boundary.

(f) A line from Craven on the Craven Branch of the Qu'Appelle, Long Lake and Saskatchewan Railway, thence in a generally northerly direction west of

Last Mountain lake to a point on the Prince Albert branch of the Canadian Northern Railway between Adam's Ferry and Brancepeth;

thus connecting the province with the Province of Alberta and with the United States of America. These powers appear to the undersigned beyond the authority of the provincial legislature to grant by reason of the exception stated in clause (a) of paragraph 10 of section 92 of the B.N.A. Act, 1867.

The undersigned does not, however on that ground recommend that the Act be disallowed. Any question which may arise in the execution of the powers so purporting to be granted may conveniently be left to the determination of the courts.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice

9 EDWARD VII, 1909

(Approved 12 December, 1910)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd December, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Province of Saskatchewan, passed in the Ninth year of His Majesty's reign (1909), and received by the Secretary of State for Canada on 11th January, 1910, and he is of opinion that these statutes may be left to such operation as they may have, excepting chapter 43, intituled "An Act to incorporate The Gardner Boggs Investment and Trust Company".

Section 19 of this Act provides that the Board of Directors may appoint agencies or local boards of directors in any city or town in Great Britain or the Dominion of Canada.

Section 26 provides that the Company may appoint or elect an advisory board in any of the provinces of Canada wherein the company is licensed to transact business, whose duties shall be defined by the by-laws of the company.

Chapter 44, intituled "An Act to incorporate Saskatchewan Securities and Trusts Corporation".

Section 19 provides that the Board of Directors may appoint agencies or local boards of directors in any city or town in Great Britain or the Dominion of Canada, their mode of appointment and powers to be fixed by the by-laws of the corporation.

Section 27 provides that the corporation may in general meeting of its shareholders pass a by-law authorizing its directors to extend the business of the corporation outside of Saskatchewan, and that the directors may give effect to such by-law.

Chapter 45, intituled "An Act to incorporate The Saskatchewan Loan Company".
Section 21 reads as follows:—

"The company may in general meeting of its shareholders duly called for the purpose pass a by-law authorizing its directors to extend the business of the company outside of Saskatchewan and the directors may give effect to such by-law without being liable or responsible as for any breach of trust in so doing.

"(2). If as provided in the next preceding subsection the company carries on business outside of Saskatchewan the company may in general meeting of the shareholders duly called for the purpose pass a by-law authorizing the directors to invest the money of the company in the erection or purchase of buildings required for the occupation of the company in any place where the company is so carrying on business."

These three corporations were vested by the said respective statutes with powers indicated generally by their titles.

The sections to which the undersigned has referred are intended to authorize the companies to carry on their business beyond the limits of the province. This is, in the opinion of the undersigned *ultra vires* of the legislature, as being in excess of the constitutional power to incorporate companies with provincial objects in the execution of which the legislation is enacted.

It has been the uniform practice of the undersigned and, so far as the undersigned is aware, of his predecessors in office, to advise the exercise of the power of disallowance in such cases unless the provisions purporting to confer extra-provincial powers are repealed, or unless satisfactory assurances be given that they will be repealed at the next ensuing session of the legislature. The reasons for such advice have been frequently stated, and it seems to be unnecessary to reiterate them.

In the recent case of the Canadian Pacific Railway Company vs. The Ottawa Fire Insurance Company, a question came before the Supreme Court of Canada with regard to the powers of companies locally incorporated to carry on business outside of the limits of the incorporating provinces, and the opinion of the majority of the judges who expressed their views was, as understood by the undersigned, unfavourable to the existence of such powers as are attempted to be conferred by the sections now in question.

The undersigned considers therefore that these Acts should be disallowed unless the local Government undertake within the time limited for disallowance to repeal Section 19 of the said Chapter 43, Sections 19 and 27 of the said Chapter 44 and Section 21 of the said Chapter 45.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor, and, since the time limited for disallowance will expire on

11th January next, that the Lieutenant Governor be requested to inform Your Excellency's Government immediately as to whether the required amendments will be made within the time limited or at the earliest ensuing session of the legislature.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 9 January, 1911)

DEPARTMENT OF JUSTICE, OTTAWA, 9th January, 1911.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit a further report upon the following statutes enacted by the Legislature of Saskatchewan in 1909; received by the Secretary of State for Canada on the 11th January, 1910, viz:—

Chapter 43, intituled "An Act to incorporate The Gardner Boggs Investment and Trust Company";

Chapter 44, intituled "An Act to incorporate Saskatchewan Securities and Trust Corporation"; and

Chapter 45, intituled "An Act to incorporate The Saskatchewan Loan Company".

These three statutes were the subject of a report by the Minister of Justice, dated 2nd December last. The Minister objected to certain provisions of each of the said statutes as extending the powers of the companies beyond the limits of the Province, and the Minister considered that these Acts should be disallowed unless the local Government would undertake within the time limited for disallowance to repeal the said provisions. The said report was duly approved by Your Excellency in Council and communicated to the Lieutenant Governor of Saskatchewan on 14th December last. No reply having been received from the Lieutenant Governor the Under-Secretary of State telegraphed him on 4th January requesting an immediate answer, and the Lieutenant Governor replied by telegram of the same day, reading as follows:—

"Government willing to repeal subsection two of section twenty-one of Chapter Forty-five, but as to remaining sections Government does not see its way clear to promise repeal in view of fact that questions involved are purely legal and have all been referred to court by Dominion Government, and judgment should be rendered soon by Privy Council. The Government submits that disallowance power should not be exercised, the Province undertaking to repeal objectionable sections if decision of court to be rendered is adverse to the Province".

The undersigned upon consideration of this telegram observes that Subsection 2 of Section 21 of Chapter 45 provides merely that if the Company carry on business outside of Saskatchewan the Company may pass a bylaw authorizing the directors to invest the money of the Company in the erection and purchase of buildings required for the occupation of the Company in any place where the Company is so carrying on business. This is a mere provision of detail for the working out of the general authority which the Act professes to confer upon the directors to "extend the business of the Company outside of Saskatchewan". The repeal proposed by the Lieutenant Governor therefore does not go far enough, and it leaves standing all the main provisions authorizing these companies to execute their powers extra-provincially.

While it may be that upon the reference now pending before the Supreme Court of Canada the Supreme Court or the Judicial Committee upon appeal, may express their views as to the authority of a provincial legislature to confer such powers, it is not, the undersigned apprehends, by any means certain that they will do so. The

majority of the provinces are opposing the hearing of the reference, and these provinces deny the jurisdiction of the Supreme Court to determine the questions submitted. The Supreme Court has pronounced in favour of its jurisdiction, but the objecting provinces are endeavouring to carry the preliminary question to the Judicial Committee upon appeal.

Moreover although Your Excellency's Government in making this reference have adopted a measure for the judicial determination of the questions submitted, yet it is possible, especially in view of the opposition of the provinces, that the reference will fail to elicit an expression of judicial opinion on the questions submitted, or some of them. Consequently the undersigned does not regard favourably the suggestion of the Lieutenant Governor to allow these statutes to stand pending the determination of the reference.

Upon the point of the objection to the capacity of the legislature to pass these enactments, there is, however, at present the authority of judges of the Supreme Court in the case of the Canadian Pacific Railway Company vs. Ottawa Fire Insurance Company, 39, S.C.R. 405, referred to by the Minister in his said report of 2nd December last, and there are also the judgments of the Judicial Committee of the Privy Council in *Dobie vs. Temporalities Board*, 7 A.C. 136, and the *Colonial Building and Investment Association vs. The Attorney General of Quebec*, 9 A.C. 157. In the latter case Sir Montague Smith delivering the judgment of the Committee said:—"The Company was incorporated with power to carry on its business consisting of various kinds throughout the Dominion. The Parliament of Canada could alone constitute a corporation with these powers".

It has been the practice of the Ministers of Justice ever since the Union to recommend the repeal of provincial clauses conferring powers upon trading corporations to carry on business outside of the incorporating provinces, or to recommend the disallowance of statutes containing these clauses. Usually the provinces have acquiesced, and there are many instances of similar provisions which were repealed by the local legislatures upon the intimation by the Government of Canada that it would otherwise be deemed necessary to disallow.

The power of disallowance is conferred upon the Government of Canada to be administered constitutionally, and while great care should be taken to see that the execution of this power does not unduly interfere with the operation of provincial laws, competent to the legislatures and consistent with the general interest, it is equally the duty of Your Excellency's Government when persuaded by authority or upon due consideration that a provincial enactment is *ultra vires* of the legislature to see that the public interest does not suffer by an attempt to sanction locally laws which can derive their authority only from the Parliament.

Ministers may of course err in the interpretation of constitutional powers, but they should not on that ground decline to give effect to what they deem to be a just conclusion. In the present case the undersigned finds himself in agreement with the Ministers of Justice from the time of Confederation, and also supported by the high judicial authorities to which he has referred.

If the powers which these Acts profess to confer as to extra-provincial business be *ultra vires*, it requires no argument to prove the inexpediency of executing them. Great confusion and hardship may result from a statutory corporation carrying on a trust or investment business in excess of its corporate powers.

The undersigned regrets that the local Government is not prepared to undertake for the amendment of these Acts as suggested by the Minister of Justice, because he realizes that there may also be some prejudice resulting from disallowance, but in the view of the undersigned no other course seems consistent with the proper administration of the power.

The undersigned assumes, however, that the event has been carefully considered by the provincial authorities who are aware of the circumstances, since the Minister

stated in terms in his said report that these Acts should be disallowed unless the local Government undertook within the time limited for disallowance to repeal the sections in question.

The undersigned therefore recommends that the said statutes, Chapters 43, 44 and 45 be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Saskatchewan, for the information of his Government.

Humbly submitted,

WILFRID LAURIER,
for Minister of Justice.

(Chapters 43, 44 and 45 were accordingly disallowed on the ninth day of January, 1911.)

1 GEORGE V, 1910-11

(Approved 20 February, 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, 12th February, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Saskatchewan, passed in the first year of His Majesty's reign (1911), and received by the Secretary of State for Canada on 25th April last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 46, intituled "An Act to incorporate Saskatchewan Securities and Trusts Corporation".

By section 11 the company is given power to receive money on deposit upon such terms as to interest, security, time of payment, or otherwise, as may be agreed upon.

Chapter 47, intituled "An Act to incorporate The Saskatchewan Loan Company".

By section 11 similar powers are conferred upon this company.

It is questionable whether the granting of authority to receive money on deposit at interest is not a banking power, and, therefore, excluded from local jurisdiction.

Chapter 50, intituled "An Act respecting the Dominion Trust Company, Limited".

This statute recites that the company has been registered under the Foreign Companies Act, and it proceeds to confer corporate powers upon the company to be exercised within the Province of Saskatchewan. The legislative authority by which this company was constituted does not appear, presumably, however, it is incorporated either by the parliament or by one of the local legislatures. In either case the company is subject to legislative authority exclusive of that of the Province of Saskatchewan, and, therefore, the jurisdiction of the last named legislature to confer these powers and so affect the constitution of the company is at least very doubtful. Moreover, one of the powers is to receive money on deposit and to allow interest on same, and this, as has been said, seems to affect the subject of banking.

The undersigned considers, however, that the objections stated with respect to these three statutes may be conveniently determined by the courts should occasion arise.

The undersigned recommends that a copy of this report if approved, be transmitted to the Lieutenant Governor of Saskatchewan, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

3 GEORGE V, 1912-13

(Approved 1 November, 1913)

DEPARTMENT OF JUSTICE, OTTAWA, 14th October, 1913.

To His Excellency the Administrator of the Government in Council:

The undersigned has had under consideration the Statutes of the Legislature of Saskatchewan, 1912-13; received by the Secretary of State for Canada on 11th February, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following observations:—

Chapter 2, intituled "An Act to provide for the Initiation or Approval of Legislation by the Electors".

While it may be competent to the legislature in the execution of its power to amend the constitution of the province to alter the constitution of the legislature, it is not in the opinion of the undersigned, doubtful that there must be a legislature for the province capable of exercising the legislative powers conferred by the Saskatchewan Act, and that the exercise of the legislative powers so conferred cannot be limited or controlled by Act of the present or of any succeeding legislature.

The present statute is apparently intended to operate partly as an interpretation Act and partly as imposing duties or disabilities upon the legislature. In the latter aspect the undersigned apprehends that the Act has no adequate sanction, but any questions which may arise with regard to it may perhaps be properly left to the judgment of the courts.*

Chapter 54, intituled "An Act to incorporate Assiniboia Trust Company".

Chapter 57, intituled "An Act to incorporate The British Western Trust Corporation".

Chapter 58, intituled "An Act respecting the Dominion Trust Company".

Chapter 61, intituled "An Act to incorporate The Trust and Loan Company of Western Canada".

Chapter 62, intituled "An Act to incorporate Western Prudential Investment and Trust Company".

Chapter 64, intituled "An Act to incorporate Empire Mortgage Trust Company".

Some of the powers conferred upon these companies appear to relate to the subject of banking. Moreover Chapter 58 is further objectionable as evidencing an attempt by the legislature to enlarge or affect powers conferred by the Parliament of Canada upon a company which is incorporated by the Parliament in the execution of its exclusive authority.

The undersigned does not, however, consider it necessary to make any special recommendation with regard to these Acts, except in the case of Chapter 62, as to which it may be observed that the company is authorized to borrow, loan and receive money on deposit on such terms as to interest, security, time of payment or otherwise as may be agreed on; to borrow or raise or secure the payment of money in such manner as the company shall think fit; to invest and deal with moneys of the company not immediately required in such manner as may from time to time be determined; and to draw, accept, indorse, discount, buy, sell and deal in bills of exchange, promissory notes, bonds, debentures, coupons and other negotiable instruments and securities.

The undersigned apprehends that these powers in combination may be classified as banking powers rather than relating to any subject within provincial legislative control. There seems indeed to be nothing lacking in the description which would be necessary to authorize the company to carry on the business of a bank of deposit, discount and exchange.

The undersigned recommends that the attention of the Lieutenant Governor be specially directed to this Act, and that enquiry be made as to whether the powers granted are not considered to be broader than can be justified from a local source, and

he recommends further that a copy of this report, if approved, be transmitted to the Lieutenant Governor for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

*(NOTE:—Legislation similar to Chap. 2 *supra*, viz, Chap. 59 of 1906 Manitoba was held *ultra vires* by the Privy Council, see 48 D. L. R. 18.)

4 GEORGE V, 1913-14

(Approved 31 May, 1915.)

OTTAWA, 28th April, 1915.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Saskatchewan, passed in the year 1914, and received by the Secretary of State for Canada on 30th October last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following remarks:—

Chapter 18, intituled "An Act to regulate the sale of Shares, Bonds or other Securities of Unregistered Foreign Securities" affects the rights of a company incorporated by or under the authority of the Parliament of Canada to dispose of its capital stock within the province. The right to sell shares, bonds or other securities of such a company is thereby made conditional upon the obtaining of a certificate from the Local Government Board, and the Board is empowered to withhold a certificate for various reasons. It appears to the undersigned that these provisions are very questionable in their application to Dominion companies and perhaps also to the other companies to which the Act is intended to apply, but the undersigned considers that any such question may be left for determination by the courts if it should arise.

Chapter 20, intituled "An Act to amend The Statute Law".

Section 17 of this Act reads as follows:—

"Section 6 of The Foreign Companies Act, being Chapter 73 of the Revised Statutes of Saskatchewan, 1909, is amended by altering the word 'shall' in the second line to 'may'; and by adding thereto the following subsection:

"(3). The registrar may, notwithstanding the compliance of a foreign company with the preceding requirements of this Act, refer its application for registry to the Lieutenant Governor in Council, and the Lieutenant Governor in Council, may refuse registration to such company at his discretion".

By the provisions of the Foreign Companies Act, Revised Statutes of Saskatchewan, 1909, Chapter 73, the expression "foreign company" is defined to mean any company or association incorporated otherwise than by or under the authority of any Ordinance or Act for the purpose of carrying on any business to which the legislative authority of the legislature of Saskatchewan extends, and therefore presumably a Dominion company incorporated under the general authority of Parliament is intended to be included within the definition. It follows of course that the amendment enacted by section 17 conferring upon the Lieutenant Governor in Council authority to refuse registration to such a company, and therefore to exclude it from carrying on business within the province, is *ultra vires*. The invalidity of such an enactment is too well established to admit of further discussion, and the undersigned considers that the local Government should take steps for the repeal of this enactment.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

NOTE:—Similar legislation was held *ultra vires* by the Privy Council in the case of Great West Saddlery Co. *vs.* the King, 58 D. L. R. 1 (1921)

5 GEORGE V, 1915

(Approved 22 June, 1916.)

DEPARTMENT OF JUSTICE, OTTAWA, 15th June, 1916.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Saskatchewan for 1915, received by the Secretary of State for Canada on the 20th day of July last, and he is of opinion that these Statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

6 GEORGE V, 1916

(Approved 15 February, 1917.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd February, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of the Province of Saskatchewan of 1916, received by the Secretary of State for Canada on 4th April last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following observations:—

Chapter 13, intituled "An Act respecting the Registration of Births, Marriages and Deaths," and cited as "The Vital Statistics Act" insofar as it relates to the matter of statistics, would seem to assume a power in the legislature which is committed by the 6th enumeration of section 91 of the British North America Act, 1867, exclusively to the Parliament of Canada. Some of the provisions of the Act may, however, doubtless have effect under the powers committed to the provinces, and the courts may decide any questions which may arise as to its validity in any particular.

Chapter 15, intituled "An Act to regulate the sale of Shares, Bonds or other securities of companies." This Act may, in the view of the undersigned, be objectionable insofar as it enables the local authorities to restrict the sale of shares of the capital

stock of companies incorporated by the Dominion, by means of the exercise of the licensing power, but this question also is susceptible of judicial determination, and may properly be left to the courts.

The Minister recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Saskatchewan, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

1917-1920

Reports on Statutes for the years 1917 to 1920 both inclusive for Saskatchewan approved by the Governor in Council contain no comments; the Statutes are left to such operation as they may have.

ALBERTA

(The Province was established by Chapter 3 of Statutes of 1905)

6 EDWARD VII, 1906

(Approved 15 May, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, 19th December, 1906.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of the Province of Alberta, passed in the sixth year of His Majesty's reign (1906), and received by the Secretary of State for Canada on 20th June last.

Chapter 49, intituled "An Act to incorporate the Kootenay, Alberta and Athabaska Railway Company."

Chapter 52, intituled "An Act to incorporate the Alberta Southern Railway Company."

Chapter 53, intituled "An Act to incorporate the Alberta Northwestern Railway Company."

These are statutes incorporating railway companies, and purporting to authorize the company in each case to construct a line of railway to the boundary of the province, either interprovincial or international. It has frequently been pointed out that such powers may be incompetent to a province to confer as professing to authorize in effect works connecting the province with another or extending beyond the limits of a province.

The undersigned does not, however, deem it necessary to do more than call attention to this objection, leaving these Acts to such operation as they may have.

Chapter 54, intituled "An Act to incorporate the Western Oil and Coal Consolidated."

Chapter 58, intituled "An Act to incorporate the Alberta Pacific Elevator Company, Limited."

Chapter 59, intituled "An Act to incorporate the Alberta Canadian Insurance Company."

These are Acts of incorporation conferring general powers upon the companies incorporated, but without any express limitation to provincial objects. The power of a provincial legislature to incorporate companies or confer powers upon them is expressed in the British North America Act under the enumeration "the incorporation of companies with provincial objects," and it is, in the opinion of the undersigned, desirable that legislation in execution of this power should be expressly limited to the objects to which the authority of the legislature extends.

The undersigned recommends, therefore, for the consideration of the Provincial Government an amendment of each of these statutes expressly limiting the exercise of the powers conferred to the Province of Alberta.

Chapter 60, intituled "An Act respecting the Wawanesa Mutual Insurance Company."

This Act recites that the Wawanesa Mutual Insurance Company is a corporation duly incorporated by letters patent of Manitoba, under the provisions of the Mutual Fire Insurance Act of that province, and that the company desires that the necessary powers may be conferred upon it by the Legislature of Alberta to enable it to carry on

its business in Alberta to the same extent as under its charter it is authorized to carry on such business in Manitoba, and it is accordingly enacted that the company is to be recognized as a corporation with all the rights, powers and privileges extending to corporations incorporated by the laws of Alberta, and authorized to carry on its business in the Province of Alberta to the same extent as in Manitoba, and as if the company had been incorporated for its corporate purposes by Act of the Legislature of Alberta.

Chapter 65, intituled "An Act respecting the Occidental Fire Insurance Company".

This Act recites that the Occidental Fire Insurance Company, a corporation duly incorporated by the Legislature of Manitoba, has presented its petition praying that the necessary powers may be conferred upon it by the Legislature of Alberta to enable it to carry on its business in Alberta to the same extent as it is authorized to carry on such business in Manitoba, and it proceeds to enact that the company is recognized as a corporation with all the rights, powers and privileges extending to corporations incorporated by the laws of Alberta, and is empowered to carry on its business in Alberta to the same extent as in Manitoba, and as if the company had been incorporated for its corporate purposes by the Legislature of Alberta.

The Legislature of Manitoba cannot incorporate a company with power or capacity to carry on business beyond the limits of its own province. The authority of the Legislature of Alberta is limited by the British North America Act to the same extent precisely as that of Manitoba. Therefore it seems to the undersigned very difficult to affirm that the two legislatures can together constitute or enlarge the powers of a corporation so that it may carry on its business equally in the two provinces. This is an authority which, in the opinion of the undersigned, is vested solely in parliament. The constitution of a company incorporated by Manitoba is not within the legislative jurisdiction of Alberta to enlarge or alter.

It is inexpedient that a corporation should be allowed to exercise important powers which it either does not possess, or which are of such doubtful validity, and the undersigned considers, therefore, that these Acts should not be allowed to remain.

The undersigned does not, however, at present recommend disallowance, but that the Government of Alberta should consider the propriety of having these two Acts repealed at the ensuing session of the legislature.

The undersigned accordingly recommends that all the said Acts other than Chapters 60 and 65 be left to such operation as they may have; that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Alberta, for the information of his Government; and that the Lieutenant Governor be requested to inform Your Excellency as soon as possible as to whether chapters 60 and 65 will be repealed within the time limited for disallowance.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

GOVERNMENT HOUSE, EDMONTON, ALTA., May 28th, 1907.

HON. R. W. SCOTT,
Secretary of State,
Ottawa.

SIR,—I beg to acknowledge receipt of your communication of the 17th inst., inclosing a memo of council *re* ordinances passed at the first session of the Alberta legislature (1906), more particularly to ordinances sixty (60) and sixty-five (65). I have forwarded the matter to the council for their consideration, but as the premier and attorney general are absent in the old country and may not be back before August 1st, next, I

am unable to say whether I will be able to forward a decision of council in the very near future. I will advise you, however, as soon as they have had an opportunity to consider the matter.

I have the honour to be, sir,

Your obedient servant,

G. H. V. BULYEA,
Lieutenant Governor.

(Approved 13 July, 1907.)

DEPARTMENT OF JUSTICE, OTTAWA, 18th June, 1907.

To His Excellency the Governor General in Council:

The undersigned, referring to the order of Your Excellency in Council of 15th May, last, has the honour to report that upon reference to the Lieutenant Governor of Alberta the Lieutenant Governor states in effect with regard to

Chapter 60, intituled "An Act respecting the Wawanesa Mutual Insurance Company," and

Chapter 65, intituled "An Act respecting the Occidental Fire Insurance Company;"

that the matter has been referred to his council for consideration, but as the premier and attorney general are absent in the old country, the other members do not see their way clear to advise any undertaking with reference to the amendment or repeal of these chapters.

The undersigned observes that the objections stated in his report, which was approved by the said order in council, are such as may be raised in proper proceedings and determined by the courts, and, therefore, in view of the facts reported by the Lieutenant Governor, the undersigned considers that the public interest may not be prejudiced by leaving these Acts to such operation as they may have.

Questions have recently been argued before the Supreme Court of Canada touching the powers of the local legislatures with regard to the incorporation of companies, and it is possible that the determination of these questions may set at rest any doubts which may be entertained as to the legality of the objections stated by the undersigned in his previous report.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Alberta, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,
Minister of Justice.

7 EDWARD VII, 1907

(Approved 12 October, 1907)

DEPARTMENT OF JUSTICE, OTTAWA, 10th October, 1907.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of the Province of Alberta, passed in the Session of 1907, and received by the Secretary of State for Canada on 27th March, and he is of the opinion that these statutes may be left to such operation as they may have.

With regard to Chapter 4, intituled "An Act to incorporate The Life Underwriters' Association of Alberta," the undersigned observes that the objects of this Society are stated to be, amongst others, to insure and promote the proper and efficient carrying on of the business of life insurance within the Province of Alberta, and to act with other similar associations in other provinces and countries for the promotion of this object. This is an objectionable power so far as relates to acting in other provinces and countries, inasmuch as a local legislature has no authority to incorporate a company to do business outside of the province. The undersigned is somewhat at a loss to understand what business a company would undertake to carry out in pursuance of a power to act with other similar associations in provinces or countries other than Alberta for the promotion of the object of insuring and promoting the efficient carrying on of the business of life insurance within Alberta. Perhaps this power so purporting to be granted is harmless as not authorizing any commercial contract or business of importance.

The undersigned recommends, however, that the attention of the Local Government be drawn to this questionable power, with a view to the promoting of legislation at the next session for its repeal.

By Chapter 45, intituled "An Act to incorporate The Calgary Fire Insurance Company," a company is incorporated with general powers to effect contracts of insurance with any person against loss or damage by fire, lightning, accidents and casualties, but there is no express limitation of this business to the Province of Alberta.

The Act cannot, however, be construed to confer powers in excess of those which the legislature may constitutionally grant, and the undersigned does not, therefore, recommend disallowance. He would prefer, however, that all such local Acts of incorporation should expressly limit the business of the companies, as they are by the British North America Act constitutionally limited, to provincial objects.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Alberta, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

8 EDWARD VII, 1908

(Approved 16 November, 1908)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd September, 1908.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislative Assembly of the Province of Alberta, passed in the year 1908, and received by the Secretary of State for Canada on 13th March last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned observes, however, as to Chapter 39, intituled "An Act to incorporate the Carbon Hill Railway Company," that the railway by this Act authorized to be constructed extends to the boundary between the Province of Alberta and the Province of British Columbia and to the International Boundary, thus connecting the Province of Alberta with the Province of British Columbia and with the United States, and connecting also the Province of British Columbia with the United States. It seems very doubtful therefore whether this railway can be regarded as a local work or one which can competently be authorized by the Legislature of Alberta.

The undersigned does not, however, recommend disallowance, considering that any question as to the constitution of this Company may be determined by the Courts.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Alberta, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

9 EDWARD VII, 1909

(Approved 28 October, 1909)

DEPARTMENT OF JUSTICE, OTTAWA, 15th October, 1909.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Alberta, passed in the 9th year of His Majesty's reign (1909), received by the Secretary of State for Canada on 26th March, 1909, and he is of opinion that these statutes may be left to such operation as they may have.

The following statute appears, however, to call for special comment:—

Chapter 4, intituled "An Act to amend the Statute Law."

Section 7 of this Act provides as follows:—

"7. The Public Works Act is amended by adding the following subsection to section 62 thereof:

"(2) All road allowances in townships now or hereafter surveyed and subdivided and all road allowances set out on block lines now or hereafter surveyed, and all public travelled roads or trails, and also all road and road allowance diversions heretofore or hereafter laid out by virtue of any statute either of the province or of the Dominion of Canada, or by virtue of any Ordinance of the North-West Territories, in the province, and all roads therein whereon public money has been expended for opening or repairing the same, or any roads therein passing through Indian lands, shall be common and public highways unless where such roads have been closed or already altered or may hereafter be closed or altered according to law and except as by law otherwise provided the soil and freehold of every such highway shall be vested in the Crown in the right of the province."

These roads and road allowances, except so far as they have been transferred by the Dominion to the Province are still vested in the Dominion, and it appears to the undersigned that the section quoted is too broad in its application, since it would cover some roads or road allowances which have not been transferred, and as to which it is therefore incompetent to the legislature to enact this section.

The attention of the Lieutenant Governor may be directed to the Saskatchewan and Alberta Roads Act, R.S. 1906, Chapter 100.

The undersigned considers that the said section 7 should be amended so as to limit its operation to the roads or road allowances, the title to which is within the legislative jurisdiction of the Province.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Alberta, for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

10 EDWARD VII, 1910

(Approved 13 December, 1910.)

DEPARTMENT OF JUSTICE, OTTAWA, 2nd December, 1910.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the PROVINCE of ALBERTA, passed in the Tenth year of His late Majesty's reign (1910), and received by the Secretary of State for Canada on the 26th March last; and he is of opinion that these statutes may be left to such operation as they may have, subject to the following observations:—

Chapter 2, intituled "An Act respecting Land Surveyors."

The attention of the undersigned has been especially directed to this Act by the Deputy Minister of the Interior, who submits a memorandum of the Surveyor General, as follows:—

"The Alberta Land Surveyors Act, assented to "March 19th, 1910, provides that no person shall within the province act as a surveyor of lands other than Dominion lands unless he has been duly authorized to practice as a land surveyor according to the provisions of this Act, and shall have become registered, etc.

"Under sections 57 and 58 of the Dominion Lands Surveys Act, Dominion land surveyors are authorized to make surveys of lands which may have ceased to belong to the Dominion. If the above provision of the Alberta Act interferes with such surveys, steps should be taken to secure the amendment of the Act.

"Subsection 2 of section 43 of the Alberta Act provides that "No plan of survey of land in the Province of Alberta other than Dominion lands the survey of which was made subsequent to the first day of January, 1911, shall be accepted by any registrar of land titles unless it be properly executed by a surveyor whose name appears on the current register, etc.

"The meaning of this subsection is not free from doubt; whatever it may be, it is submitted that the exemption should cover all official plans of Dominion made under the authority of section 56 of the Dominion Lands Surveys Act."

The undersigned assumes that it is not the intention of the legislature to interfere with the provisions or the operation of the Dominion Lands Surveys Act, but it appears that doubt or difficulties may arise in the working of the local Act, having regard to the provisions to which the Surveyor General refers. The undersigned therefore commends the report of the Surveyor General to the consideration of the local Government, with the request that the said Chapter 2 be amended by a legislative declaration that nothing in the Act contained is intended to conflict or interfere with the operation within the province of Sections 56, 57 and 58 of the Dominion Lands Surveys Act according to the terms of the said sections.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor for the information of his Government, and that the Lieutenant-Governor be requested to inform Your Excellency's Government whether an amendment in effect as herein suggested will be made within the time limited for disallowance.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

(Approved 14 March, 1911.)

DEPARTMENT OF JUSTICE, OTTAWA, 3rd March, 1911.

To His Excellency the Governor General in Council:

The undersigned, referring to the Order in Council of 13th December last, with regard to the Statutes of ALBERTA for 1910, has the honour to report that the Legislature of Alberta at its subsequent session amended Chapter 2, intituled "An Act respecting Land Surveyors", by adding a section which provides that "nothing in this Act shall apply to restoration surveys or resurveys of land in the province made by the Dominion Land Surveyors under the authority of any department of the Government of Canada."

The undersigned is of opinion that this amendment may be accepted as a sufficient provision to remove the Surveyor General's objections and he therefore recommends that no further action be taken with regard to the said chapter 2.

The undersigned further recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Alberta for the information of his Government.

Humbly submitted,

A. B. AYLESWORTH,

Minister of Justice.

1 GEORGE V, 1910 (2nd SESSION)

(Approved 22 January, 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, 20th January, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under further consideration the Statutes of the province of ALBERTA, passed at the second session of the legislature of the year 1910, and received by the Secretary of State for Canada on 23rd January, 1911.

None of these statutes appear to call for further comment except chapter 9, intituled "An Act respecting the Bonds Guaranteed for the Alberta and Great Waterways Railway Company, being an Act to specify certain defaults of the Railway and the consequent rights of the Province"; and chapter 11, intituled "An Act respecting Alleged Claims in connection with The Alberta and Great Waterways Railway Company."

The Alberta and Great Waterways Railway Company was incorporated by Act of the legislature of Alberta, chapter 46 of 1909, with power to construct and operate a railway from Edmonton north-easterly to a point at or near the west end of Lac La Biche, thence to a point at or near Fort McMurray, and from a point in the said line at or near the west end of Lac La Biche to the eastern end thereof. It is thus a local undertaking within the jurisdiction of the legislature.

By chapter 16 of 1909 the government of Alberta was authorized subject to the provisions of the said chapter to guarantee the payment of principal and interest of bonds of the company to the extent of twenty thousand dollars per mile of the mileage of its lines of railway, including branches and sidings, and to the additional extent of the cost of the Edmonton terminals, which latter guaranty was not to exceed \$400,000.

By the said chapter 9 of the second session of 1910 reference is made to the said Act providing for the guaranty, and it is recited that bonds of the railway to the

amount of \$7,400,000 had been executed by the Company, secured by mortgage in favour of the Standard Trust Company, payment of which bonds the province of Alberta had guaranteed; that the bonds had been sold, but that the Company had made default in payment of interest thereon; that the province of Alberta had paid the interest so in default; that the Company had also made default in the construction of its line, and that the proceeds of the bonds to the amount of their par value with accrued interest were lying to the credit of the provincial treasurer or otherwise, as to \$6,000,000 and interest, in the Royal Bank of Canada; as to \$1,000,000 and interest, in the Union Bank of Canada; and as to \$400,000 and interest, in the Dominion Bank.

The enacting provisions following upon these recitals are embodied in three sections as follows:—

"1. The Province of Alberta hereby ratifies and confirms the guarantee by it of the said Bonds and the Treasurer of Alberta is hereby empowered and instructed to execute a guarantee on behalf of the Province of said Bonds."

"2. The whole of the proceeds of the sale of the said Bonds and all interest thereon, including such part of the proceeds of said sale as is not standing in certain Banks in the name of the Treasurer of the Province or otherwise as follows, viz:—

"Six million Dollars and accrued interest in the Royal Bank of Canada;

"One Million Dollars and accrued interest in the Union Bank of Canada;

"Four Hundred Thousand Dollars and accrued interest in the Dominion Bank;

"Is hereby declared to form part of the general Revenue Fund of the Province of Alberta free and clear of any claim thereon or thereto by the Alberta and Great Waterways Railway Company, their successors or assigns; and, together with all accrued interest thereon, shall, to the extent to which they are so held, be forthwith paid over by the Banks hereinbefore recited, and by any other person holding any part thereof, to the Treasurer of the Province without any set-off, counterclaim or other deduction whatsoever.

"3. Notwithstanding the form of the said Bonds and the guarantee thereof, the Province of Alberta shall as between itself and The Alberta and Great Waterways Railway Company be primarily liable upon the said Bonds to the several holders thereof, and the Province shall indemnify and save harmless the Railway Company and its assets and undertaking from any and every claim made under the said Bonds or any of them."

Recently an application has been made for the disallowance of the said chapter 9. Petitions and memorials with exhibits have been submitted, and counsel have been permitted to argue the application orally before a committee of the advisers of Your Royal Highness. At the hearing counsel advocating disallowance were heard on behalf of one of the bondholders, on behalf of the Royal Bank of Canada, and on behalf of the railway company, Mr. W. R. Clarke, of Kansas City, the principal promoter of the company, and the Canada West Construction Company, Limited, the latter company having contracted for the building of the railway and become the assignee of the proceeds of the bond issue, subject to the terms of the statutes and contract in that behalf. Counsel were also heard on behalf of the government of Alberta maintaining the Act.

It was urged on behalf of the bondholder that his security had been varied by the legislation, also that the Act was ultra vires of the legislature as designed to raise provincial revenue in a manner not authorized by the British North America Acts. It was urged on behalf of the Royal Bank of Canada that the terms of the arrangement had been varied under which it held the said deposit of \$6,000,000; that the effect of the Act was to destroy the security upon which the bank had advanced to the con-

struction company a sum of more than \$370,000, and that the Act is consequently *ultra vires* as interfering with the exclusive authority of Parliament with regard to banking. It was urged on behalf of the railway company, Mr. Clarke, and the construction company that the railway company was in reality not in default as recited by the statute, and that the proceeds of the bonds had been by the legislation unjustly diverted from the purpose of the construction of the road for which they had been raised and deposited. It was further argued generally that the Act should be disallowed as injuriously affecting the general credit and reputation of the Dominion.

On behalf of the government of Alberta it was in effect said in justification of the Act that the government had proceeded to guarantee the bonds without due inquiry and upon misleading information furnished on behalf of the railway company, and that the Government had in consequence become responsible by the guaranty for a large sum of money in excess of what the railway could reasonably cost. It was said that the railway company had issued to the construction company all its stock as fully paid up, and that even if the construction company were to complete the railway in accordance with its contract the railway company would have no funds with which to equip and operate the road. It was said to have been ascertained that the promoters of the company had no financial capacity to engage in such an important undertaking, and that the provision of the statute requiring \$50,000 of the capital stock to be subscribed and paid in full before the company commenced business had only been colourably complied with. It was moreover represented that no work had been done upon the railway during the season of 1910, although the statute required that the company should proceed with the utmost despatch. It was said that an instalment of interest upon the bonds had fallen due on 1st July, 1910, amounting to \$185,000, which was not paid by the company, and that the province had satisfied this under its guaranty.

For these and other reasons it was maintained on behalf of the government of Alberta that the legislation authorizing the provincial guaranty, and the proceedings taken in the execution of it, were improvident, and so far in conflict with the best interests of the province as to justify the legislation complained of.

Some questions of fact were raised upon the argument which cannot conveniently be determined by Your Royal Highness' government. It appeared, however, that previously to the legislation of 1910 the affairs of the railway had been the subject of inquiry and report under a commission issued by the government of Alberta to enquire as to whether any of the officers of the government or members of the legislature were interested in the railway company or the guaranty. It appeared also that the Royal Bank of Canada had resisted the demand of the government, based upon the said chapter 9 of 1910, to pay over the proceeds of the bonds deposited with it to the treasurer of the province; that this action had been tried, and that the trial judge had decided against the bank.

It was said that an attempt had been made by the said chapter 11 of 1910 to provide a remedy for any person or corporation suffering loss in consequence of the Act complained of. The said chapter 11 provides for the filing of claims, the investigation thereof under the direction of the Lieutenant-Governor in Council and report to the Legislative Assembly. No obligation is imposed, but the legislation can reasonably have been enacted only with a view of making further provision for indemnity in meritorious cases.

The question was submitted by the prime minister in the course of the hearing to counsel for the local government as to whether the government were willing to give any further assurance that such claims if established would be recognized and paid. Counsel after consideration and conference with the Prime Minister of Alberta replied by letter of 8th instant, stating as follows:—

"I have now had an opportunity of consulting with Mr. Sifton, the Premier of Alberta, in regard to the suggestions expressed by you on Friday last during the hearing of the petitions for disallowance.

"I find that he is of opinion that it will be impossible for him to enlarge on the statement which he made publicly in the Alberta House during the last session. The statement was made in my presence and appeared to have the concurrence, not only of the members of the Government, but of the other members of the House. It was 'that the Government would pay every dollar *bona fide* expended in the construction of the railway in question, including preliminary surveys and necessary supplies therefor.'

"Mr. Sifton authorizes me to repeat and renew this statement to you now, but, as you can easily understand, it will be impossible to make such payments until the final settlement of the litigation which is now before the courts.

"This litigation has been seriously delayed by the defendants during the past year, but the Government will continue in the future, as it has done in the past, to use every legitimate means to expedite the final conclusion with the view both of clearing up the present difficulties and of paying the claims above mentioned."

There was considerable discussion at the hearing as to the practice and precedents in respect of disallowance of legislation by reason of unjust provisions or because of its interference with vested rights or the obligations of contract, and a recent report of the predecessor in office of the undersigned was quoted as showing that the Governor General should in no case be advised to disallow for such reasons. It is true, as has been frequently pointed out, that it is very difficult for the government of the Dominion, acting through the Governor General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights affected, and this is manifest not only by expressions in reports of the Ministers, but also by the fact that but a single instance is cited in which the Governor General has exercised the power upon these grounds alone.

The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes *intra vires* of the legislatures. Doubtless however the burden of establishing a case for the execution of the power lies upon those who allege it; and, although the undersigned is not prepared to express any approval of the statute in question, which he feels must be regarded as a most remarkable exercise of legislative authority, he is nevertheless not satisfied that a sufficient case for disallowance has been established either on behalf of the bondholder, the bank or the companies, especially when it is considered that the legislation sanctioned by the Assembly evidences as it does a very deliberate and important feature in the policy of the local government. It is true that the security of the bondholder is affected, but it does not appear to have been diminished, inasmuch as the province itself is declared to be primarily liable for the bonds. It is true also that the security of the bank may be affected, but the undersigned cannot suppose, in view of the assurance above quoted from the Prime Minister of Alberta, that the province would hesitate to indemnify the bank in so far as the advances made by the bank were, in view of the circumstances, charged even contingently upon the fund; and, except in so far as these advances constitute such a charge, it seems to be at least doubtful whether the bank had originally any greater security than it still retains.

The questions of fact as between the companies and the local government cannot, as has been said, be determined by Your Royal Highness' government, but the undersigned apprehends that it is sufficient for present purposes to say that he is not convinced after the very thorough discussion to which the matter was subjected, that it was prejudicial to the credit of the Dominion, or not advisable in the interests of the province, to take legislative measures to prevent improvident application of

these funds, which had been raised virtually upon the credit of the province, and which the province had bound itself to repay with interest. As in the case of the bank, so in the case of the companies, the undersigned anticipates that indemnity for actual expenditures will be provided. Meantime it appears that the litigation is still pending upon appeal, and it is of course open to the parties to raise the questions of *ultra vires* which were urged at the hearing. The undersigned does not doubt that these objections may be more conveniently determined by the courts than upon the advice of Your Royal Highness' ministers.

The undersigned, therefore, recommends that the said Acts, chapters 9 and 11 of the second session of 1910 be left to such operation as they may have, and that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Alberta, for the information of his government, and to the respective solicitors of the bondholder, the bank and the companies who appeared at the hearing.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

(Order in Council 31 March 1911, P.C. 629)

The Committee of the Privy Council have had before them a report, dated 16th March, 1911, from the Secretary of State for External Affairs, to whom was referred a despatch, dated 22nd February, 1911, from the Right Honourable the Principal Secretary of State for the Colonies, on the subject of the Act passed by the Legislature of Alberta at the Second Session of 1910 (Cap. 43) entitled, "An Act to incorporate the Institute of Chartered Accountants of Alberta".

The Minister recommends, with the concurrence of the Minister of Justice, that he be authorized to enquire of the Lieutenant-Governor of Alberta as to whether the said Chapter 43 will be amended within the time limited for disallowance, so as to except from its operation the British Institute of Chartered Accountants, and the members or licensees thereof.

The Committee, concurring, advise that Your Excellency may be pleased to inform the Right Honourable the Principal Secretary of State for the Colonies of the action contemplated in this matter.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

DOWNING STREET, 22 February, 1911.

S. of S. No. 376, 31 May, 1910. S. of S. No. 102, 16 February, 1911.

My LORD,—I have the honour to request your Excellency to inform your Ministers that my attention has been called to the Act passed by the Legislature of Alberta at the Second Session of 1910 (Cap. 43) entitled "An Act to incorporate the Institute of Chartered Accountants of Alberta."

2. I observe that sections 15 and 18 of the Act follow the model of the legislation adopted in Ontario in 1910 which has formed the subject of the correspondence noted in the margin. The same objections apply to this legislation also and I shall be glad if your Ministers will take into their consideration whether the Act should not

be disallowed unless it is amended so as to meet the reasonable objections of the Institute of Chartered Accountants in this country.

I have the honour to be, My Lord,

Your Lordship's most obedient, humble servant,

L. HARCOURT.

Governor-General

His Excellency

The Right Honourable

EARL GREY, G.C.M.G., G.C.V.O.,

etc., etc., etc.

To His Excellency the Governor General in Council:

The undersigned, to whom was referred a despatch from the Secretary of State for the Colonies to your Excellency, dated 22nd February 1911, on the subject of the Act passed by the Legislature of Alberta at the Second Session of 1910 (Cap. 43) entitled "An Act to incorporate the Institute of Chartered Accountants of Alberta", has the honour with the concurrence of the Minister of Justice, to recommend that he be authorized to enquire of the Lieutenant Governor of Alberta as to whether the said Chapter 43 will be amended within the time limited for disallowance, so as to except from its operation the British Institute of Chartered Accountants, and the members or licensees thereof.

The undersigned further advises that the Secretary of State for the Colonies be informed of the action recommended by this report.

All of which is respectfully submitted:

CHAS. MURPHY,

Secretary of State for External Affairs.

OTTAWA, 16th March, 1911.

(Order in Council, 20 April 1911, P.C. 825)

On a memorandum dated 11th April 1911, from the Minister of Justice, stating that his attention has been directed to a recent Act of the Legislature of Alberta, assented to 5th December 1910, Chap. 48, intituled "An Act to incorporate 'Canadian Northern Western Railway Company'".

The Minister observes that this Act incorporates a local railway, but it contains two clauses, Sections 2 and 7, which provide in effect that the Company may by bylaw prescribe that its head office shall be outside the Province of Alberta, and that special general meetings of the shareholders of the Company may be held outside the province.

The Minister further states that in his opinion these provisions are incompetent to the local legislature or inexpedient in the general interest. He considers, therefore, that the Act should be amended by repealing these powers and so confine the place of the head office and meetings of the Company to the Province of Alberta.

The Minister, therefore, recommends that inquiry be made of the Lieutenant Governor as to whether the Act will be so amended within the time limited for disallowance.

The Committee submit the same for approval.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

(Order in Council, 24 November 1911, P.C. 2642.)

On a memorandum, dated 20th November, 1911, from the Minister of Justice, submitting that he has had under consideration the despatch of the Lieutenant Governor of Alberta of 21st September last, enclosing letter from the Premier of Alberta with respect to Chapter 43 of the Alberta Statutes, 1910, Second Session, intituled, "An Act to Incorporate 'The Institute of Chartered Accountants of Alberta'".

That Mr. Sifton states in the said letter that there does not appear to be any reason for an amendment to the Act; that he is informed that similar Acts have been passed and are now in force in several of the other provinces, and that the Dominion Chartered Accountants are strongly opposed to the suggested amendment. So far as the penultimate statement is concerned, the Minister observes that the corresponding Ontario Statute of 1910 relating to Chartered Accountants was disallowed upon consideration of the facts represented by the English Institute and after communication with the local authorities and the officers of the Ontario Institute, and the present Ontario Statute, Chapter 48 of 1911 is now under consideration.

The Minister further observes that he has recently received a letter from the Solicitors in Ottawa of the English Institute, enclosing copy of a letter from the Secretary of the Institute to the Under-Secretary of State for the Colonies, in which it is suggested that section 17 of the Ontario Act corresponding to section 15 of the Alberta Act now under consideration should be amended by adding a proviso which might run as follows:—

Provided that any Fellow or Associate of the Institute of Chartered Accountants established in England and Wales shall be entitled to describe himself as such or to use the letters F.C.A. or A.C.A. as the case may be, provided, that in the case of the use of the said letters the words 'of England and Wales' be added thereto in such a way as to qualify the meaning of the same.

It appears to the Minister that the suggested amendment is a very reasonable one as designed to meet the just cause of complaint by the English Institute, and at the same time to provide for the due operation of the local statute.

The Minister, therefore, in the hope that the suggested amendment may, notwithstanding the views expressed in Mr. Sifton's letter, commend itself to the Government of Alberta, recommends that a further despatch in the sense hereof be sent to the Lieutenant Governor with a request for further consideration, and since the time for disallowance of the Alberta Act will expire on the 23rd January 1912, the Minister also recommends that the Lieutenant Governor be requested to furnish an early answer.

The Committee concur in the recommendations of the Minister of Justice and submit the same for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

NOTE:—No report other than the reports on particular Acts was made respecting the statutes of 1910 (second session)

2-3 GEORGE V, 1911-12

(Approved 8 October 1912.)

DEPARTMENT OF JUSTICE, OTTAWA, September 17th, 1912.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of Alberta for the current year which were received by the Secretary of State for Canada on 13th March

last; and he is of opinion that these Statutes may be left to such operation as they may have, except Chapter 15, intituled "An Act to amend the Railway Act".

Section 7 of this Act is objectionable.

It is provided by the Railway Act of Alberta which is declared to apply to all railways authorized to be constructed by any special Act of the province, section 82, as follows:—

"The company may take possession of, use or occupy any lands belonging to any other railway company, use and enjoy the whole or any portion of the right-of-way, tracks, terminals, stations or station grounds of any other railway company and have and exercise full right and powers to run and operate its trains over and upon any portion or portions of the railway of any other railway company, subject always to the approval of the Lieutenant Governor in Council first obtained or to any order or direction which the Lieutenant Governor in Council may make in regard to the exercise, enjoyment or restriction of such powers or privileges.

(2) Such approval may be given upon application and notice and after hearing the Lieutenant Governor in Council may make such order, give such directions and impose such conditions or duties upon either party as to the said Lieutenant Governor in Council may appear just or desirable having due regard for the public and all proper interests and all provisions of the law at any time applicable to the taking of land and their valuation and the compensation therefor and appeals from awards thereon shall apply to such lands and in cases under this section where it becomes necessary for the company to obtain the approval of The Board of Railway Commissioners for Canada it shall do so in addition to otherwise complying with this section."

Section 7 of the Act now in question amends the said section 82 by adding thereto the following:—

"(3) The provisions of this section shall extend and apply to the lands of every railway company or person having authority to construct or operate a railway otherwise than under the Legislative authority of the Province of Alberta in so far as the taking of such lands does not unreasonably interfere with the construction and operation of the railway or railways constructed and operated or being constructed and operated by virtue of or under such other legislative authority."

It thus appears that the Legislature of Alberta assumes to authorize local railway companies within Alberta to take possession of, use and occupy lands of railway companies not incorporated under the legislative authority of the province, and the power is expressed in terms broad enough to extend to the lands of railway companies incorporated by Parliament under its exclusive powers. The legislation is therefore, plainly *ultra vires*, and affecting as it does such an important subject as the taking over compulsorily of property of a Dominion Railway, cannot expediently be allowed to remain.

The undersigned recommends, therefore, that communication be had with the Lieutenant-Governor of Alberta to ascertain whether his Government will see that the said section 7 is repealed within the time limited for disallowance.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

(Order in Council, 4 January, 1913, P.C. 4)

The Committee of the Privy Council, on the recommendation of the Minister of Justice, advise that pursuant to Section 60 of the Supreme Court Act, the following questions be referred by Your Royal Highness in Council to the Supreme Court of Canada for hearing and consideration, viz.:—

1. Is Section 7 of Chapter 15 of the Acts of the Legislature of Alberta of 1912, intituled "An Act to amend the Railway Act" *intra vires* of the Provincial Legislature in its application to Railway Companies authorized by the Parliament of Canada to construct or operate railways?

2. If the said Section be *ultra vires* of the Provincial Legislature in its application to such Dominion railway companies, would the Section be *intra vires* if amended by striking out the word "unreasonably"?

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

NOTE.—This reference does not appear to have been proceeded with.

4 GEORGE V, 1913

(Approved 17 November, 1913)

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1913.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Alberta, passed at the last session, 1913, and received by the Secretary of State for Canada on 19th April last, and he is of opinion that these statutes may be left to such operation as they may have, subject to the following comments:—

Chapter 3, intituled "An Act to Provide for the Initiation or Approval of Legislation by the Electors."

While it may be competent to the legislature in the execution of its power to amend the constitution of the province to alter the constitution of the legislature, it is not, in the opinion of the undersigned, doubtful that there must be a legislature for the province capable of exercising the legislative powers conferred by the Alberta Act, and that the exercise of the legislative powers so conferred cannot be limited or controlled by Act of the present or of any succeeding legislature.

The present statute is apparently intended to operate partly as an interpretation Act, and partly as imposing duties or disabilities upon the legislature. In the latter aspect the undersigned apprehends that the Act has no adequate sanction, but any questions which may arise with regard to it may perhaps be properly left to the judgment of the courts.*

Chapter 16, intituled "An Act respecting Insurance Companies."

Some of the provisions of this Act are, in the opinion of the undersigned, questionable, especially those which are intended to impose disabilities upon companies incorporated by the Parliament of Canada to execute their corporate powers within the province. Any questions which may arise upon the subject may, however, be left to the judgment of the courts and may not improbably be determined in pending cases.

Chapter 18, intituled "An Act relating to Town Planning."

The undersigned has received a communication that the city of Edmonton "is preparing under the provisions of this Act to carry out schemes to inflict great injury upon the property-holders along its lines of street railways, by which the city, and its street railways in particular, under their public utilities as well as the

public at large, are to be greatly benefited without compensating the property-holders who suffer for such public improvements." It is said that the property-holders protest against the Act as being hurried through the legislature in the face of an election without proper consideration, and that the Acts, if allowed to stand, will permit an outrage to be inflicted upon helpless individuals without any compensation being given.

The particulars of this general complaint are not stated, but the undersigned observes that *prima facie*, at all events, the Act appears to contain reasonable provisions for compensation to those whose property may be injuriously affected by a town-planning scheme.

In any case, in view of these provisions, and considering that the legislation is intended for municipal improvements and relates to local public matters within the undoubted authority of the legislature, the undersigned apprehends that even although the provisions for compensation may in some respects appear inadequate, the remedy of the proprietors lies in an application to the legislature for suitable amendment rather than in disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Alberta, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

* (NOTE:—Legislation similar to Chap. 3 *supra*, viz, Chap. 59 of 1906 Manitoba was held *ultra vires* by the Privy Council, *see* 48 D. L. R. 18)

5 GEORGE V, 1914

(Approved 2 July, 1915)

25th June, 1915.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Alberta for 1914, and received by the Secretary of State for Canada on the 3rd day of November last, and he is of opinion that these statutes may be left to such operation as they may have.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Province, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

5 GEORGE V, 1915

(Approved 2 July, 1915)

28th April, 1916.

To His Royal Highness the Governor General in Councils

The undersigned has had under consideration the Statutes of the Legislature of the Province of Alberta, passed in the Fifth year of His Majesty's reign, 1915, and received by the Secretary of State for Canada on 28th April last, and he is of opinion that these statutes may be left to such operation as they may have.

Chapter 5, intituled "An Act respecting the Property of Intestates dying without Next-of-kin," ought perhaps strictly to be disallowed as evidencing an attempt by the legislature to acquire by the exercise of its limited powers the right to escheats which are claimed on behalf of the Dominion. The undersigned has, however, concluded not to recommend the exercise of the power in this case upon the consideration that the Act can do no harm. The question of the right to escheats is now in litigation as between the Dominion and the Province of Alberta, and if it be held that they belong to the Province, the legislation is, in the point of view of the undersigned, unobjectionable. If, on the other hand, escheats are royalties belonging to the Dominion under the Constitutional Act of the Province, it is manifestly beyond the power of the legislature to take them away by any means, either direct or indirect. This legislation it may be said has already been pronounced *ultra vires* by the learned judge of the Exchequer Court, whose decision is now under appeal; and while the undersigned considers very objectionable the policy of an attempt to deny by Act of the legislature rights in litigation claimed by the Dominion as against the province, he considers it so obviously impossible to affect the propriety rights of the Dominion by provincial enactment that he is disposed to accept the responsibility of advising Your Royal Highness to refrain from exercising the power to disallow in this particular case.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of Alberta, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

(NOTE.—The judgment of the Exchequer Court holding the Act *ultra vires* was affirmed by the Supreme Court of Canada, 54 Can. S.C.R. 107).

6 GEORGE V, 1916

(Approved 28 February, 1917)

DEPARTMENT OF JUSTICE, OTTAWA, 23rd February, 1917.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the statutes of the Legislature of Alberta, 1916, received by the Secretary of State of Canada on 1st May last, and he is of opinion that these may be left to such operation as they may have, subject to the following comments:—

Chapter 8, intituled "An Act to regulate the sale of shares, bonds and other securities of Companies." It is, in the opinion of the undersigned, questionable whether some of the provisions of this Act are *intra vires* in their application to companies incorporated by the Parliament of Canada, but the undersigned considers that any question which may arise upon that may be conveniently left to the determination of the courts.

Chapter 22, intituled "An Act respecting Vital Statistics." A question as to the validity of this Act, or some of its provisions, is suggested by the fact that the subject of the census and statistics is by section 91 of the British North America Act 1867 assigned to the exclusive legislative authority of Parliament, but the undersigned does not on that account consider it advisable to recommend disallowance.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Alberta, for the information of his Government.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

7 GEORGE V, 1917

(Approved 22 April, 1918)

OTTAWA, 19th April, 1918.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Statutes of the Legislature of Alberta, passed in the 5th Session of the 3rd Legislative Assembly, beginning on 6th February, 1917, and closed on 5th April of the same year, and he is content that these statutes should be left to such operation as they may have.

It may be proper to observe in this connection, however, that there has been referred to the undersigned copy of a despatch of 29th June last from the Secretary of State for the Colonies, transmitting copy of a letter from the Privy Council Office, upon the subject of medical reciprocity between the Province of Alberta and the United Kingdom as regulated by Section 26 of Chapter 3 of the said statutes, entitled "An Act to amend the Statute Law." The undersigned submits herewith copy of Mr. Long's despatch and of the enclosures therewith, and he recommends that a copy of this report, if approved, together with the accompanying papers, be transmitted to the Lieutenant Governor of Alberta, for the consideration of his Government.

In the meantime the undersigned is not disposed to recommend that His Majesty should exercise the power conferred by Section 17 of the Medical Act, 1886, to declare by Order in Council that Part II of the said Act shall apply to the Province of Alberta, seeing that so long as the proviso to Section 37 (a) of the Medical Profession Act of Alberta, as enacted by Section 26 of Chapter 3 of the Act now in question, remains in force, the effect of such an Order in Council would be to confer on practitioners registered in the United Kingdom recognition throughout Alberta from which Canadian practitioners who have obtained registrable qualifications in their own province or in the United Kingdom while retaining Canadian domicile would be debarred in Alberta.

Humbly submitted,

CHAS. J. DOHERTY,

Minister of Justice.

DOWNING STREET, 29th June, 1917.

MY LORD DUKE,—I have the honour to transmit to Your Excellency, for the consideration of your Ministers, the accompanying copy of a letter from the Privy Council office, on the subject of an Act recently passed by the Legislature of the Province of Alberta dealing (amongst other things) with the question of medical reciprocity between that Province and the United Kingdom.

2. I would refer you to Lord Crewe's despatch, No. 738, of the 16th of December, 1909, and subsequent correspondence regarding the similar question which arose in the case of the Quebec legislation, and to which allusion is made in the letter from the General Council of Medical Education and Registration of the United Kingdom of the 8th instant.

I have the honour to be, My Lord Duke,

Your Grace's most obedient humble servant,

WALTER H. LONG.

Governor General,
His ExcellencyThe Duke of Devonshire, K.G., G.C.M.G., G.C.V.O.,
&c., &c., &c.

PRIVY COUNCIL OFFICE,

LONDON, S.W., June 12, 1917.

SIR,—I am directed by the Lord President of the Council to transmit to you, to be laid before Mr. Secretary Long, the accompanying copy of a letter from the General Medical Council containing observations on certain provisions of an Act recently passed by the Legislature of the Province of Alberta, Canada, dealing (amongst other things) with the question of medical reciprocity between that province and the United Kingdom, and to state that, in His Lordship's opinion, the retention of the proviso to section 37a of the Act in its present form would prove a serious obstacle in the way of such reciprocity.

I am to point out that, so long as the proviso in question is in force, the effect of an Order in Council applying Part II of the Medical Act, 1886, to the province of Alberta would be to confer on Alberta practitioners recognition throughout those parts of the British Empire to which Part II has been applied, whereas Canadian practitioners who have obtained registrable qualifications in their own province, or in the United Kingdom, while retaining their Canadian domicile, would be debarred from practice in Alberta.

The Lord President will accordingly be glad if Mr. Long will communicate with the Canadian Government with a view to the amendment by the Provincial Legislature of the proviso by substituting the words "Province of Alberta" for the words "Dominion of Canada," thereby bringing it into conformity with legislation for a similar purpose in other provinces.

I am, etc.,

ALMERIC FITZROY.

The Under-Secretary of State, etc.,
Colonial Office.

GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION OF THE UNITED KINGDOM.

June 8, 1917,

SIR,—The Council has received from time to time since the 15th of May, 1915, and has entered on its minutes communications from the Registrar of the College of Physicians and Surgeons of the province of Alberta, indicating the desire of that college for the establishment of reciprocity with the United Kingdom. By the last Canadian mail I have received from the Registrar a copy of an Act to amend the Statute Law of the province of Alberta, chapter 3, 1917, section 26 of which is as follows:—

"37a. Every medical practitioner registered in the Medical Register of Alberta, is amended by inserting immediately after section 37 thereof the following new section:

"37a. Every medical practitioner registered in the Medical Register of the United Kingdom of Great Britain and Ireland, upon proof to the satisfaction of the Registrar of the College of Physicians and Surgeons of Alberta, that he is so registered, and that he is of good character, and that he is by law entitled to practise medicine, surgery and midwifery in the United Kingdom, shall, on application to the said registrar and on payment of such fee, not exceeding \$100 as shall be the fee which by regulation of the Council, shall from time to time be charged for registration of all persons entitled to be registered in the province of Alberta, be entitled without examination in the province of Alberta, to be registered under the provision of the Medical Profession Act:

"Provided that he proves to the satisfaction of the registrar that the diploma or diplomas, in respect of which he was registered in the said Medical register of the United Kingdom, was or were granted to him at a time when

he was not domiciled in the province of Alberta, or in the course of a period of not less than five years during the whole of which he resided out of the Dominion of Canada."

The president, to whom I have shown the statute, directs me to state that he finds that except in one particular, which is of some importance, it complies with the conditions which have already been approved by the King in Council, with reference to other provinces of the Dominion of Canada. The proviso in the section lays down that a practitioner registered in the Medical Register of the United Kingdom must have obtained his diploma within a period of five years, "during the whole of which he resided out of the Dominion of Canada." It will be remembered that in the case of the province of Quebec, a similar proposal to rule out the other provinces of the Dominion of Canada and other parts of the Empire, was objected to by the Privy Council and local legislation had to be resorted to in order to replace the words "resided without interruption in the said United Kingdom" by "resided out of the province of Quebec." Similarly in the regulations recently adopted with reference to the province of Ontario, residence out of that province was alone prescribed. The president is convinced that, if Alberta is allowed to rule out the rest of the Dominion of Canada under this proviso, a grievance will be created in the other provinces which have already accepted reciprocity with this country and the Canadian practitioners who have obtained registrable qualifications either in their own province or in the United Kingdom, while still retaining their Canadian domicile, and have registered in this country with a view to obtaining commissions in the army service or otherwise, will find themselves excluded from practice in Alberta.

He has accordingly directed me to address a communication to the Provincial College of Physicians and Surgeons requesting that, as in the case of the other provinces of Canada, the words "Province of Alberta" should be substituted for the words "Dominion of Canada" in the proviso referred to, and he would be glad if you would also move the Privy Council to communicate in regard to this matter with the Privy Council for Canada.

I am, etc.,

A. J. COOKINGTON,

Acting Registrar.

The Clerk of the Council,
Privy Council Office, S.W.I.

EDMONTON, August 20th, 1918.

Memo for the Hon. Mr. Boyle:

Re Alberta Medical Profession Act and attached communications from the Secretary of State.

In 1917 provision was made for the registration here, without examination, of medical practitioners registered in Great Britain. It was made a condition to such registration, however, that the applicant prove to the satisfaction of the Registrar that the diploma, in respect of which he was registered in the Medical Health Register of the United Kingdom, was granted to him "at a time when he was not domiciled in the Province of Alberta, or in the course of a period of not less than five years, during all of which he resided out of the Dominion of Canada."

The objection raised in the attached correspondence is as against the condition above referred to, and it is recommended in the correspondence that the words "Dominion of Canada" be replaced in the Act by "Province of Alberta."

These objections can no longer be taken as the entire provision of our Act, respecting the conditions of registration under Section 37a, has been repealed; it being now provided by Section 64 of the Statute Law Amendment Act, 1918, that

in order to obtain such registration it will only be necessary to prove to the Registrar that the General Medical Council of Great Britain will accept diplomas of persons admitted upon the Alberta Medical Register under the provisions of the first subsection of Section 35 of the Alberta Medical Profession Act.

W. FORBES,

Acting Deputy Attorney General.

1918, 1919, 1920

Reports on Statutes for the year 1918, 1919 and 1920 for Alberta approved by the Governor in Council contain no comments: the Statutes are left to such operation as they may have.

NORTHWEST TERRITORIES

60th VICTORIA, 1896

2ND SESSION—3RD LEGISLATURE

(Approved February 22, 1897)

DEPARTMENT OF JUSTICE, OTTAWA, 17th February, 1897.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that he has examined the several Ordinances passed by the Legislative Assembly of the Northwest Territories in the sixtieth year of Her Majesty's reign (1896), assented to on the 30th October, 1896, and received by the Secretary of State for Canada on the 30th day of November, 1896, and he is of opinion that they may be left to their operation without any observations.

The undersigned recommends that, if this report be approved, a copy of the same be sent to the Lieutenant Governor of the Province for the information of his Government.

Respectfully submitted,

O. MOWAT,
Minister of Justice.

61st VICTORIA, 1897

3RD SESSION—3RD LEGISLATURE

(Approved September 1, 1898)

DEPARTMENT OF JUSTICE, OTTAWA, 12th August, 1898.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the Ordinances of the Northwest Territories, passed in the year 1897, and received by the Secretary of State for Canada on the 24th day of January, 1898, as follows:—

Ordinance No. 8. "An Ordinance respecting Municipalities."

By section 98 of this Ordinance the Council of every municipality is empowered to pass by-laws for certain purposes, amongst others, under paragraph 63 of the said section, for regulating the rate of speed of railway trains and engines along or across any of the streets or avenues of the municipality, and for other purposes touching the operation of railways upon the streets of the municipality, and precautions to be observed at crossings.

The undersigned observes that while the power so conferred may have application with reference to railways within the jurisdiction of the Legislative Assembly of the Northwest Territories, it is at least very questionable whether it can have any application to railways under the exclusive authority of the Parliament of Canada, especially in view of the fact that Parliament has already legislated with respect to the subjects as to which the municipalities are by the section in question empowered

to make by-laws. The undersigned does not consider, however, that the inconvenience which may arise from leaving this Statute to its operation is such as to justify Your Excellency in the exercise of the power of disallowance.

Ordinance No. 17 entitled "An Ordinance respecting the Department of Public Works."

Section 28 purports to authorize the Commissioner of Public Works to stop the construction of, or cause to be removed, works being constructed, or which have been constructed, in any river which will obstruct the navigation of such river.

The subject of navigation being one of the exclusive subjects for Dominion legislation, and no authority with regard to that subject having been conferred upon the Legislative Assembly, the undersigned considers that the provision referred to is *ultra vires*. The Courts may, however, conveniently give effect to this view, and having regard to the other provisions of this Ordinance, which are unobjectionable, the undersigned does not recommend disallowance.

Ordinance No. 36 entitled "An Ordinance respecting Justices of the Peace."

Section 11 provides that every Justice of the Peace who convicts and imposes any fine, forfeiture or penalty shall make a return thereof to the Attorney General and to the Territorial Treasurer, and that, except where otherwise specially provided, the amount of such fine, forfeiture or penalty shall be transmitted to the Territorial Secretary by the Justice of the Peace.

The undersigned assumes that this provision is intended to apply only to fines, forfeitures or penalties imposed upon the authority of Territorial Ordinances. It can have no application to cases arising under the laws of the Dominion. It is, however, expressed in terms so general as to include such cases, and the undersigned recommends that the attention of the Legislative Assembly be called to this section with a view to a suitable amendment limiting its application to cases within the jurisdiction of the Legislature.

The undersigned sees no reason to comment upon the remaining Ordinances, and he recommends that they, together with those specially referred to in this report, be left to their operation.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

62nd VICTORIA, 1898

4TH SESSION—3RD LEGISLATIVE ASSEMBLY

(Approved 17 April, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 7th March, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Ordinances of the Legislative Assembly of the Northwest Territories, passed in the year 1898, and received by the Secretary of State for Canada on 4th October, 1898, and he is of opinion that these Ordinances may be left to their operation without comment with the exception of—

No. 30—"An Ordinance respecting Irrigation Districts."

Section 29 of this Ordinance provides that occupants of town lands in respect of which homestead or purchase rights have been granted shall be liable to taxation in respect of their occupancy of the same, in the same way as owners of other lands.

This section, as the undersigned construes it, contemplates only a personal taxation, and not a taxation of the lands. The taxes would be recoverable in the manner

provided by sections 67 and 68, and it is not intended that they should be a charge upon the land or collected as provided by sections 70-73.

Upon that construction the section is unobjectionable. Any interpretation which would charge these taxes upon the lands would give the section an effect beyond the authority of the Legislative Assembly, and this it would be the duty of the courts to prevent.

Section 77 is in terms wide enough to authorize regulations being made which would be inconsistent with section 34 of the Northwest Irrigation Act, 1898, and it would have been better if the power given by that section had been stated to be subject to the provisions of the latter Act, as the present expression is somewhat misleading. The undersigned recommends that the matter be called to the attention of the Legislative Assembly, so that they may make a proper amendment.

No. 39, "An Ordinance respecting the Consolidated Ordinances of the Territories."

This Ordinance provides for the consolidation of the public Ordinances of the Territories, and for bringing the consolidation into effect by proclamation of the Lieutenant Governor.

The Ordinance in itself is unobjectionable, but the consolidation which is to be made under it has not yet been submitted to the undersigned, and he cannot, therefore, express an opinion upon it.

The undersigned assumes, however, that it is not intended to enact new laws by the consolidation, and existing Ordinances contained therein will be considered as subject to comments which were made upon them in the ordinary course.

The undersigned does not consider that either of these Ordinances should be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Territories for the information of his Government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

1899-1900

Reports on Statutes for the years 1899 and 1900 for the Northwest Territories approved by the Governor in Council contain no comments; the Statutes are left to such operation as they may have.

1 EDWARD VII, 1901

3rd SESSION—4th LEGISLATIVE ASSEMBLY

(Approved 25 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, December 31, 1901.

These ordinances were received by the Secretary of State for Canada on 13th July last.

Chapter 4, "An ordinance respecting Public Works."

Section 28 provides that the Commissioner of Public Works for the Territories may close up the whole or any portion of any public road allowance or any public road, and may deal with the land in such road allowance or other public road as may seem expedient, and (2) that all documents necessary to transfer the title to the province, of any road allowance or any public trail which has been closed as therein provided, shall be signed by the commissioner.

This section would appear to be *ultra vires* of the Territorial Legislature in view of the provisions of subsection 1 of section 20 of chapter 17 of the Dominion statutes of 1894, as that subsection is enacted by section 20 of chapter 28 of the statutes of 1897. The subsection as so enacted provides that, subject to any ordinance made with respect thereto, the Lieutenant Governor in Council may close up any road allowance or trail which has been transferred to the Territories, or vary its direction, and may open and establish any new highway instead thereof, and may deal with the land in any road allowance, public travelled road or trail so closed as he sees fit.

It seems clear that while the legislature might, by ordinance, have provided a procedure for the closing of roads by the Lieutenant Governor in Council, or have defined the circumstances in which roads might be so closed, and might have prescribed the methods and procedure for the dealing by the Lieutenant Governor in Council with the lands comprised in closed roads or road allowances, it was beyond its power to vest in any other body or official, the power to close them up, or to deal with the lands in them when closed.

The undersigned considers, therefore, that section 28 should be repealed or amended so as to make its provisions consistent with those of the Dominion statute, and he recommends that the government of the Territories be requested to have such amendment made at the next session of the legislature.

Chapter 7, "An ordinance respecting steam boilers," provides for the appointment of inspectors of steam boilers for the Territories, and requires all such boilers to be annually inspected by the inspectors. No express exception from the requirements of the ordinance is made as to Dominion Government boilers or boilers used upon work, under the exclusive jurisdiction of parliament. The undersigned apprehends that the ordinance must be construed as not applying to these, and that in so far as it could be held to have any application to such Dominion boilers, the ordinance must be *ultra vires*. The undersigned does not recommend disallowance, but he directs attention to the matter, with a recommendation that the Territorial government have the Act amended so as to expressly except from its operation all boilers used in connection with works under the exclusive authority of parliament.

Chapter 22, "An ordinance respecting foreign companies," will be the subject of a separate report. The other ordinances may be left to their operation without comment.

DAVID MILLS,
Minister of Justice.

(Approved 10 January, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 21st December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 22 of the ordinances of the Northwest Territories, passed in the first year of His Majesty's reign (1901) and received by the Secretary of State for Canada on 13th July, 1901, intituled: "An Ordinance respecting Foreign Companies."

The expression "foreign company" is defined to mean any company or association incorporated for the purpose of carrying on any business to which the legislative authority of the Legislative Assembly of the Territories extends, otherwise than by or under the authority of an ordinance of the Territories.

It is provided that no foreign company having gain for its object or a part of its object, shall carry on any part of its business in the Territories, unless and until it shall have been duly registered and licensed under this ordinance, and unless such license is in force, and there is a penalty provided against any unlicensed foreign company carrying on business, and against any company or person doing business

on behalf of such unlicensed foreign company. It is enacted that a foreign company may become registered and obtain a license authorizing it to carry on its business or part thereof within the Territories on compliance with the provisions of the ordinance, and on payment of such fees as may be prescribed by the Lieutenant Governor in Council, and that subject to the provisions of its charter and regulations and to the terms of the license, such company shall upon being licensed, have the same powers and privileges in the Territories as if incorporated under the provisions of the Companies' Ordinance.

It may be observed here that, inasmuch as a foreign company is prohibited from doing any business without license, and since the effect of the license is thus stated to entitle the company subject to the provisions of its charter and regulations and the terms of its license to the same powers and privileges in the Territories as if incorporated under the provisions of *The Companies' Ordinance*, the implication and probable intention of the Legislature would seem to be that such a company when licensed may only carry out within the Territories the objects of its charter in so far as the same are authorized by the terms of the license and the provisions of *The Companies' Ordinance*, so that there may be limitations imposed even as against a licensed company to exercise the powers conferred by its constitution.

Before the issue of a license to any foreign company, the company is required to file in the office of the registrar a verified copy of its charter and regulations, an affidavit that the company is still in existence and legally authorized to transact business under its charter, a copy of the last balance sheet of the company and the auditor's report thereon (or in the case of a company licensed under the Insurance Act of Canada, a duplicate of its last annual return), also a duly executed power of attorney approved by the registrar, empowering some person therein named residing within the Territories to act as attorney for the company for the purpose of accepting service of process, &c.

Section 6 provides that if the registrar is satisfied that the company is one that should be registered, he shall thereupon register the same and issue a license containing certain particulars, the form of which license is by section 16 to be prescribed by the Lieutenant Governor in Council.

Section 8 requires every company licensed under the ordinance to make a statement annually to the registrar, verified by affidavit, containing a number of particulars as to the constitution and business of the company, except with regard to companies licensed under the Insurance Act of Canada, as to which a verified copy of an annual return is to be accepted in lieu of the foregoing statement. The registrar is, however, authorized to require any foreign company to supply such further and other information as shall seem to him reasonable and proper. The Lieutenant Governor is empowered by Order in Council to suspend or revoke the license to any company which refuses or fails to keep a duly appointed attorney within the Territories, or to comply with any of the provisions of the ordinance.

There is no doubt under the definition above quoted that the ordinance is intended to apply to companies incorporated by or under the authority of Canada, as well as to companies incorporated by any other authority outside the Territories and it is the undersigned apprehends clear having regard to the provisions of the ordinance, especially those to which he has particularly referred, that the object in view is not merely taxation, but also the regulation by means of licensing jurisdiction of the business of companies to which the ordinance is intended to apply.

The attention of the undersigned was first called to this ordinance by letter of 10th September last, from Messrs. Lougheed and Bennett, barristers, of Calgary, a copy of whose communication and of the correspondence thereupon with the Attorney General of the Northwest Territories is submitted herewith. The Deputy Minister of Justice having, by direction of the undersigned, written to the Attorney General of the Northwest Territories, requesting him to submit any reasons which he thought proper for consideration of the undersigned in reporting upon the ordinance, the

Attorney General cited the Companies' Act, 1897, of British Columbia, Part VI., Revised Statutes of British Columbia, 1897, Chapter 44, and the Ontario Act, respecting the licensing of extra provincial corporations, 63 Victoria, Chapter 24, as precedents for the ordinance. He states that the ordinance in question follows those statutes, and inasmuch as neither of them was disallowed, he assumed that the policy of Your Excellency's government was not to interfere with such legislation.

The undersigned does not consider it necessary to compare in detail the present ordinance with the statutes to which the Attorney General refers. It differs in material respects from both of them. The British Columbia Act was left to its operation subject to the remarks of the Minister of Justice set forth in his report approved by the Governor General in Council on 8th November, 1897, and it is evident that that Act was not understood, so far as the point now in question is concerned, otherwise than as a measure of taxation. The Minister stated expressly that he construed the Act to intend that upon compliance with the statutory conditions, a company should be entitled to license, and that no power was attempted to be conferred by the Act which would authorize the licensing authority in refusing a license to such a company, where the company had complied with the requirements of the Act which seemed not unreasonable as to the filing of information and payment of fees. The Ontario Act which more nearly resembles this ordinance narrowly escaped disallowance, and it was only saved by amendments made or agreed to be made, removing the objections raised by the undersigned which apply similarly to this ordinance.

It has been frequently stated by the undersigned or his predecessors in office, that the Parliament of Canada in the execution of its general authority to legislate for the peace, order and good government of Canada as well as in the regulation of trade and commerce, may incorporate companies with authority to do business throughout the Dominion, both with regard to matters specially enumerated by section 91 of the British North America Act, and as to matters, which so far as the territorial authority of the legislatures extend, are competent to these legislatures; and while the undersigned does not deny to the legislatures power of taxation, he holds that neither in the execution of that or any other power have they the right to forbid the exercise by a company of its authority competently conferred in the execution of the exclusive powers of parliament or to impose restrictions upon such Dominion corporations, from which the like companies incorporated for similar purposes within the province, are exempt. The ordinance in question, however, contemplates that result, not only to the extent already pointed out, but because it appears to vest a discretion in the registrar as to whether or not any company applying shall be licensed. If it be determined that a company may be licensed, the powers conferred by its charter may be limited by the license, and the Lieutenant Governor in Council is authorized at any time to revoke the license. Such provisions relate to regulation rather than taxation, and are in the opinion of the undersigned *ultra vires*. With reference to the Ontario Act, the undersigned stated that he did not consider that a provincial legislature ought to require the payment of a license fee as a condition to a Dominion corporation doing business within the province, or to exact license fees discriminating between the trading corporation established by parliament and those established by the legislature. He stated that it was impossible to admit consistently with the general interests of Canada the principle of interference with Dominion policy, by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and that in such case disallowance was the proper remedy. The Ontario Act having been already amended by providing in effect that the licenses to be issued thereunder should not be subject to any limitations or conditions which would restrict the right of any corporation constituted by the Dominion or the late province of Canada, to carry on and exercise in Ontario all the business and powers which by its Act or charter of incorporation it might be authorized to carry on and exercise in Ontario, the undersigned considered that there should

be further legislation either exempting Dominion corporations from the statute, or establishing equality with regard to license fees and taxation as between Dominion and provincial companies, and the Ontario government by formal minute, communicated to Your Excellency's government, gave the assurance that legislation would be introduced and carried through at the next session of the legislature making amendments in accordance with the view of the undersigned. In these circumstances the Act as amended was permitted to remain in operation.

The undersigned considers that the ordinance now in question can only be allowed to remain upon the same conditions. It should be amended so as either to exempt Dominion corporations altogether, or so as to provide that every such company shall be entitled to a license in terms as broad as the charter of the company, upon payment of the license fees lawfully required, and that no license fee shall be imposed or exigible under the ordinance as against a Dominion corporation, either as a condition to its doing business within the Territories or otherwise, except in so far as under the like circumstances a similar license fee is similarly chargeable by the law of the Territories, as against companies incorporated by or under the authority of a Territorial ordinance.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Territories, and that he be requested to inform Your Excellency's government as soon as convenient, whether his government will undertake to have the ordinance amended in the manner indicated above within the time limited for disallowance. The Lieutenant Governor may also be asked in case the Territorial government agree to make such amendments to submit a copy of such proposed amendments for the consideration of Your Excellency's government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Messrs. Lougheed and Bennett to the Honourable the Minister of Justice

CALGARY, N.W.T., September 10, 1901.

SIR,—On behalf of a large number of companies incorporated by letters patent under the provisions of "The Companies' Act," revised statutes of Canada, 1886, chapter 119 and amendments thereto, we beg to direct your attention to "The Foreign Companies' Ordinance" passed by the legislative assembly of the Territories at its last session, being chapter 22 of the Ordinances of 1901. The Territorial government is now seeking by virtue of this legislation, to compel all companies not incorporated under the authority of an ordinance of the Territories to take out a license and pay a very large fee therefor.

We submit that the legislation is *ultra vires* at least in so far as the definition of a foreign company is concerned. Subsection 1 of section 2 of the ordinance is as follows:—

"1. 'Foreign company' shall mean any company or association incorporated for the purpose of carrying on any business to which the legislative authority of the Legislative Assembly of the Territories extends, otherwise than by or under the authority of an ordinance of the Territories."

Chapter 22, sec. 6, 54 and 55 Vic. and chap. 28, 60 and 61 Vic., section 6 (Dom.) are the foundations for the legislative jurisdiction of the Territories, and it will be noted that these Acts empower the Legislative Assembly "subject to the provisions" of the North-west Territories Act or of any other Act of the Parliament of Canada declared to be applicable to the Territories, to make ordinances for the government of the Territories in relation to certain enumerated subjects the seventh of which is

the incorporation of companies. The Companies' Act is undoubtedly applicable to the Territories, and we submit that any legislation passed in the Territories must necessarily therefore be subject to the provisions of chapter 119 and amendments thereto of the revised statutes of Canada. Take two cases now before us as examples. The H. W. McNeill Company, Limited, have a charter of incorporation under the great seal of Canada authorizing them to carry on the business of coal mining. The head office of this company is at Anthracite, within the Territories. The Calgary Brewing and Malting Company, Limited, is another company holding a charter of incorporation under the great seal of Canada. This company's head office is at Calgary and it is authorized to carry on business within the Dominion of Canada. The Great West Saddlery Company, Limited, another company whose head office is in the city of Winnipeg, but which carries on business at many points in the Territories, has a charter of incorporation under the great seal of Canada authorizing it to carry on business throughout the Dominion of Canada. If chapter 22 of the ordinances of 1901 is allowed to go into operation, the result will be to absolutely destroy the provisions of the Companies' Act of Canada, in so far as these companies are concerned, but not only is it sought to apply the provisions of the ordinance to such commercial companies as those mentioned, but also to life insurance and kindred institutions. The result in the latter cases is to destroy entirely the effect of section 4 of the Insurance Act, Chap. 124, R.S.O., which provides that insurance companies with a Dominion license may "carry on such business in Canada." We quite admit of course that it is within the power of the Territorial Assembly to pass legislation taxing every company doing business within the Territories. Such legislation would come within the principle of the Bank of Toronto and Lamb, but the ordinance in question is not a taxing ordinance; it is a licensing ordinance pure and simple, and as it comes into force on the 1st day of October, 1901, we should be glad to have a reply from your department at an early date indicating whether or not it is to be permitted to go into operation.

Yours faithfully

LOUGHEED & BENNETT.

The Deputy Minister of Justice to the Attorney General

DEPARTMENT OF JUSTICE, OTTAWA, September 14th, 1901.

SIR,—I am directed to inclose for your consideration copy of a communication dated 10th instant, received from Messrs. Lougheed & Bennett, of Calgary, calling attention to chapter 22, intituled: "The Foreign Companies Ordinances," passed by the Legislative Assembly of the Territories at its last session. Will you be good enough to submit such observations as you think proper for consideration of the Minister in reporting upon this ordinance in view of the representations made.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Attorney General of the North-west Territories to the Deputy Minister of Justice.

OFFICE OF THE EXECUTIVE COUNCIL, REGINA, October 2nd, 1901.

SIR,—I have the honour to acknowledge the receipt of your letter of the 14th ult., inclosing a copy of a letter from Messrs. Lougheed & Bennett, advocates, of Calgary, pointing out that in their opinion the Foreign Companies Ordinance, chapter 22 of the ordinances of 1901, is *ultra vires*, and asking for the submission of such observations thereon as I consider proper for the consideration of the Minister. Before con-

sidering any lengthy argument on the authority of the Legislative Assembly to pass this ordinance, I beg to point out, in so far as it appears objectionable to Messrs. Loughheed & Bennett, it follows the British Columbia Act, passed in 1897, now Part VI. of chapter 44 of the revised statutes, and the Ontario Act passed in 1900, being chapter 24 of the statutes of that year, both of which were allowed to go into operation. It is possible that there may be some argument applicable to Territorial legislation on this subject which is not applicable to similar provincial legislation; and I am aware that it has been contended in the past by the Dominion authorities that the provinces had no power to impose on Dominion companies conditions such as are imposed by these Acts. But in view of these facts, that the Acts mentioned have not been disallowed, and that practically the same question is involved, I have assumed that the present federal government preferred to leave such arguable matters to the courts to decide. If I am in error as to this, and the Minister wishes to consider the question of authority, I shall be very pleased to furnish him with reasons why I consider the ordinance under consideration is within the authority of the Legislative Assembly to pass.

I have, &c.,

F. W. G. HAULTAIN,
Attorney General.

BILL

No. OF 1902.

AN ORDINANCE to amend Chapter 22 of the Ordinances of 1901, intituled "An Ordinance respecting Foreign Companies."

(Assented to 1902.)

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:—

1. Section 4 of the Foreign Companies Ordinance is hereby amended by striking out the words, "may from time to time be prescribed by the Lieutenant Governor in Council" where they occur therein, and substituting therefor the following words, "such company would be required to pay if applying for incorporation under the companies ordinance."

2. Section 6 of the said ordinance is hereby amended by adding the following proviso to the first subsection, "Provided that nothing in this ordinance contained shall be deemed to empower the registrar to refuse a license to any foreign company complying with the provisions of this ordinance to carry on so much of its business as may be applied for if within the legislative authority of the Legislative Assembly."

Report of the Attorney General of the North-west Territories upon Chapter 22.

REGINA, April 3rd, 1902.

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration the minute of the Privy Council of Canada, approved by His Excellency the Governor General on the 10th January, 1902, concurring in a report of the Canadian Minister of Justice thereto annexed, respecting chapter 22 of the ordinances of the North-west Territories for the year 1901, intituled: "An Ordinance respecting Foreign Companies," which minute was received by Your Honour on the 21st day of January last, and was thereafter referred to the undersigned for his report, which has been delayed owing to his absence from the Territories.

The objections of the Minister of Justice to the ordinance appear to be that it is *ultra vires* in attempting to impose regulations and restrictions on Dominion com-

panies, and that it is an interference with Dominion policy, by discriminating in taxation against Dominion companies in favour of territorial companies, and he suggests that it be amended so as to remove these objectionable features.

The undersigned, however, submits that the ordinance is not *ultra vires*, but is quite within the power of the legislative assembly to pass. It is admitted that the object of the ordinance is not merely one of taxation, but is also one of regulation, but it is submitted that since it is limited in its application to companies which the legislative assembly would have power to incorporate, the right of imposing conditions on companies to which it applies, though incorporated under the authority of parliament, is clearly conferred on the assembly by parliament.

The powers conferred on the Territorial Legislature, as far as the principle under review is concerned, are practically the same as those conferred on a provincial legislature by the British North America Act, and in the absence of Dominion legislation specially applying to the Territories, the position of the Territories does not differ from that of a province.

Reference is made by the Minister of Justice in his report to the British Columbia Act, part VI., revised statutes, chap. 44, and to the Ontario Act, 63 Vic., c. 24. Reference may also be made to the Manitoba Act, 60 Vic., c. 2, which was disallowed.

The Minister of Justice states that this ordinance more nearly resembles the Ontario Act than the British Columbia Act, but it is submitted with all due respect that if he had compared the ordinance in detail with the two Acts, which he states he had not done, he would not have come to the conclusion he did. With one or two exceptions the difference between the ordinance and the British Columbia Act are more matters of detail not affecting any principle of the law, while there is the radical difference of principle between the ordinance and the British Columbia Act on the one hand and the Ontario Act on the other, that the application of the former is limited to companies formed for the purpose of carrying on business to which the legislative authority of the legislature extends, while that of the latter extends to companies incorporated by the Dominion under its exclusive jurisdiction. It was on this ground that the Manitoba Act referred to, which was similar to the Ontario Act in this respect, was disallowed.

The undersigned begs to refer to the report of the then Minister of Justice, Sir Oliver Mowat, dated 15th November, 1897, on the Manitoba Act. He says:—

“It has been held that the Dominion has power to incorporate a company for the whole Dominion though the objects of the company are provincial, a provincial legislature having no power to authorize a company to do business outside of the province as regards each province. Sir John Thompson mentioned the cases in his report on the 16th July, 1887, on a Quebec Act. It may be competent for a provincial legislature to require that a license shall be obtained by such a company before it shall do business in the province. As to that it is not necessary at present to express any decided opinion either way; but there can be no doubt that where a company is incorporated by the Dominion in the execution of any one or more of its special and exclusive powers of legislation, enumerated in section 91, a provincial legislature has no authority to impose any such condition, and the Act should be amended so as to apply, so far as Dominion corporations are concerned, to such companies only as have been incorporated for provincial objects within the authority of a provincial legislature, so far as relates to the province.”

In a subsequent report, dated 8th March, 1898, on the same Act, Hon. David Mills, who had succeeded Sir Oliver Mowat as Minister of Justice, states as follows:—

“When the objects of a corporation are provincial, but it desires corporate existence extending over the Dominion of Canada, it may be doubted whether the parliament of Canada can do more than create a company with the capacity to exercise such powers; and the undersigned is of opinion that any powers

which may be conferred by parliament in such cases can be exercised only so far as the exercise of them is consistent with the general laws of the provinces; otherwise the provincial legislature would have no greater authority to prohibit the exercise of those powers than it has to prohibit those falling within the enumerated subjects of section 91 of the British North America Act."

In his report, dated 20th October, 1897, on the British Columbia Act, Sir Oliver Mowat says:—

"It appears to the undersigned, therefore, that the provisions of the statute with regard to the licensing of companies incorporated by the Dominion parliament are not intended to affect the execution of powers which could not be completely conferred by the provincial legislature, and that the Act was not intended to impose any condition upon the exercise by a Dominion corporation, of powers conferred by parliament within the scope of the subjects specially enumerated in section 91 of the British North America Act. If the Act were intended to apply to such companies it would be necessary to consider the propriety of its disallowance upon the grounds which led to the disallowance of a recent statute of the legislature of Manitoba (58-59 Victoria, chapter 4). See the report of Sir Charles Hibbert Tupper, when Minister of Justice, approved by Your Excellency on the 8th November, 1895, and the report of Mr. Dickey, his successor, approved on the 26th March, 1896. It is true that the parliament of Canada has authority, not apparently by reason of any of the special subjects of legislation enumerated in section 91, but by force of its general authority, to legislate for the peace, order and good government of Canada, to incorporate companies with powers which would otherwise be exclusively within provincial authority, where such powers are to be exercised by the company within two or more provinces of the Dominion, and it may be that such companies, under the provisions in question, would be required to take out licenses in order to entitle them to carry on their business in British Columbia. The undersigned observes, however, that no power is attempted to be conferred by this Act, which would authorize the licensing authority in refusing a license to such a company, where the company had complied with the requirements of the Act, which seem not unreasonable as to the filing of information and payment of fees, and although there may be different views as to the power of a provincial legislature to impose such a restriction upon any company incorporated under the legislative authority of parliament, yet the undersigned considers, in view of the reasons which may be urged in favour of the provincial right, he would not be justified in recommending the disallowance of this Act, and he recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government."

The undersigned does not deem it necessary to refer to the various decisions of the Judicial Committee of the Privy Council and of other courts relating to the conflicting rights of the Dominion and provinces in the matter of incorporation and regulation of companies, as they have been very frequently referred to and considered, but he submits that the views expressed in the reports above quoted are sufficient justification for his view that this ordinance should not be disallowed.

Beyond the question of the general validity of the ordinance, the undersigned is of opinion that the view taken by the Minister of Justice, that the registrar has power to restrict the license of any company to a part of its objects, and even to refuse a license if he thinks fit, is not supported by the ordinance, for, in the opinion of the undersigned, no such power is given by the ordinance.

Section 4, which is not referred to by the Minister of Justice in his report, provides that:

"Any foreign company may become registered and obtain a license from the registrar authorizing it to carry on its business or part thereof within the

Territories, on compliance with the provisions of this ordinance, and on payment to the registrar of such fees as may from time to time be prescribed by the Lieutenant Governor in Council."

It is quite true that this contemplates a license for less than the whole business of the company, and will authorize the granting of an application when the company desires to carry on only a part of its business, and since, in the opinion of the undersigned, the assembly cannot authorize a foreign company, one of whose objects falls without its legislative authority, to carry on that portion of its business any more than it could authorize the incorporation of such company with such an object, it is necessary to provide for a license for part of the business of a company to meet the case of companies a part of whose objects fall without the legislative authority of the assembly, and in the opinion of the undersigned the application of this provision is limited to cases of this character.

The Minister of Justice concludes that the use of the words in section 6, "If the registrar is satisfied that the company is one that should be registered," indicates a discretionary power in the registrar to reject any application, but the undersigned submits that being read with section 4, the words can mean no more than that the registrar must first be satisfied that the company is one complying with the definition in respect of its manner of incorporation and its objects, and in having gain for one of its purposes, and that it has complied with the other provisions of the ordinance requiring the filing of documents and the payment of fees, and that if all of these conditions are fulfilled, the registrar is bound to grant the license applied for.

The undersigned, therefore, considers the first suggested amendment unnecessary, but beyond the fact of its being unnecessary, he sees no objection to it.

The other suggested amendment relates to fees, and inasmuch as the British Columbia Act was approved in the report of Sir Oliver Mowat above referred to and in part quoted, which report is impliedly adopted in the report of the Minister of Justice now under consideration, the undersigned assumes that the provisions of that Act in respect to license fees are satisfactory to His Excellency's government. The fees under that Act are fixed by the Act itself with reference to the capital of the company, being the same as those imposed on the incorporation of local companies, there being thus no discrimination between local and foreign companies.

The undersigned, therefore, sees no serious objection to the adoption of the principle of that Act in this respect by an amendment providing that the fees paid on application for license shall be the same as the fees paid on application for incorporation under the provisions of The Companies' Act.

The undersigned recommends that a copy of this report, if approved, together with a copy of the proposed amendments hereto annexed, be transmitted by your Honour for the information of His Excellency's government, with a request that you be advised as speedily as possible whether the proposed amendments are approved, in order that if approved they may be passed by the assembly now in session.

Respectfully submitted,

F. W. G. HAULTAIN,

Attorney General.

(Approved May 31, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, May 19, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the despatch of the Lieutenant Governor of the North-west Territories, dated April 3rd last, transmitting a certified copy of an approved minute of the executive council of the Territories in reply to the

despatch founded upon the report of the predecessor in office of the undersigned, respecting chapter 22 of the ordinances of the North-west Territories, 1901, intituled: "An Ordinance respecting Foreign Companies." This minute of the executive council approves of a report of the Attorney General of the North-west Territories submitting copy of proposed amendments to the ordinance. Copy of the report and these proposed amendments is submitted herewith. Upon perusal of this report and the proposed amendments, it having been represented that the assembly was about to prorogue, the undersigned on April 16th last telegraphed to the Attorney General stating in effect that the proposed amendments were unsatisfactory: that he did not agree with the construction put upon the ordinance by the Attorney General, but that if the ordinance was amended so as to provide that it should not apply to any company which the Territorial assembly had not authority to incorporate, he would consider the matter further. No reply was received to this message, but in examining the ordinances passed at the recent session of the assembly, the undersigned observes that an amending ordinance was assented to on April 19th last whereby clause (c) of section 5 of the Foreign Companies Ordinance was repealed, and it is declared that the provisions of the said ordinance are intended to apply only to companies incorporated to carry out or effect one or more of the purposes or objects falling within the classes of subjects in relation to which the Legislative Assembly has power to make ordinances. No further amendment appears to have been passed, and the undersigned assumes therefore that the amendments proposed by the despatch of the Lieutenant Governor were abandoned. The amendments made by the aforesaid ordinance of 1902 do not touch the objections stated in the report of Mr. Mills. The repeal of clause (c) of section 5 is quite immaterial to the discussion, and the declaration limiting the application of the ordinance to companies incorporated to carry out or effect one or more of the purposes or objects falling within the classes of subjects in relation to which the Legislative assembly has power to legislate does not, in the opinion of the undersigned, improve the ordinance from a constitutional point of view. The Attorney General admits that the object of the ordinance is not merely one of taxation, but is also one of regulation. He submits, however, that it is limited in its application to companies which the Legislative Assembly would have power to incorporate, and that therefore the assembly has clearly the right of imposing conditions upon the companies to which the ordinance applies, although incorporated under the authority of parliament. The undersigned entertains no doubt, however, that the ordinance has a broader application than stated by the Attorney General, and he observes that the Attorney General has not acted upon his suggestion to give effect by amendment to the construction urged by the Attorney General. The authority of the Legislative Assembly of the Territories with regard to incorporation of companies does not extend beyond the incorporation of companies with territorial objects. The foreign companies which it is intended to tax and regulate by the ordinance in question are defined as those incorporated for the purpose of carrying on any business to which the legislative authority of the assembly extends, except those incorporated by or under the authority of an ordinance of the Territories. None of these companies having gain for their object, are permitted to carry on any part of their business in the Territories until registered and licensed under the ordinance. The Attorney General states that it is provided to issue a license for part of the business of a company to meet the case of companies, part of whose objects fall without the legislative authority of the assembly. He considers, therefore, that the ordinance applies to a Dominion company having powers, part of which would be beyond the authority of the assembly to confer, and part of which would be within such authority. In such a case, however, if the ordinance is to have effect according to its terms, such a company might be unable to exercise any of these extra territorial powers without a territorial license, because it is expressly provided that a foreign company within the definition of the ordinance shall not carry on any part of its business in the Territories without a license. The ordinance, therefore, even in the view presented by the Attorney

General may directly interfere with matters beyond the legislative authority of the assembly, and the undersigned considers further that upon the grounds stated in the reports of his predecessors, to some of which the Attorney General refers, the project of regulating the business of Dominion companies which is stated by the Attorney General to be one of the objects of this legislation, is *ultra vires* of the territorial assembly.

The Manitoba Act to which the Attorney General refers, and in respect of which he quotes the reports of Sir Oliver Mowat and Mr. Mills, was disallowed upon the report of the latter Minister, and in that report, an extract from which is quoted, Mr. Mills stated expressly that he did not consider it necessary to state any opinion as to whether it was competent to a provincial legislature, when the franchises sought by the Dominion company are of a provincial character, to require that a license should be obtained by such company before it is permitted to do business in the province. The undersigned does not consider it necessary to add anything further to the report of his predecessor respecting the Act of British Columbia. He may observe, however, that the question, together with previous reports, was reviewed at considerable length in Mr. Mills' report of November 22nd, 1901, upon the Ontario statute, 63 Victoria, chapter 24, in which the Minister arrived at the conclusion, approved by Your Excellency in Council, that the Act in question was *ultra vires*, and that so far as it had any operation as to Dominion corporation, it was likely to interfere with the carrying into effect of the policy of Dominion legislation, unquestionably competent to parliament, with regard to the incorporation of companies intending to do business in Ontario. The same observation and the reasons upon which it was founded apply to the ordinance under consideration.

The undersigned, therefore, for the reasons stated by his predecessor, and the further reasons referred to in this report, recommends that the Foreign Companies' Ordinance be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the North-west Territories for the information of his government.

C. FITZPATRICK,
Minister of Justice.

Chapter 22 disallowed accordingly on May 31, 1902

NOTE:—See the decision of the Privy Council in Great West Gaddlery Co Ltd, vs. the King 58 D.L.R. (holding similar legislation *ultra vires*.)

2 EDWARD VII, 1902

4TH SESSION—4TH LEGISLATIVE ASSEMBLY

(Approved 12 December, 1902)

DEPARTMENT OF JUSTICE, November 24, 1902.

These ordinances were received by the Secretary of State for Canada on 13th May last. They may be left to their operation without comment except as follows:—
Chapter 4, "An ordinance respecting public health."

Section 19 enacts that "When any part of the Territories becomes exposed to any contagious, infectious or epidemic disease then existing in any place outside the Territories, the Lieutenant Governor in Council may declare that such disease exists in such place as aforesaid and prohibit all ingress to the Territories therefrom for a period to be named in such order."

The undersigned considers it very doubtful whether the Territorial Assembly has authority to prohibit ingress to the Territories, such legislation seeming to extend

beyond private and local matters and all other subjects committed to the jurisdiction of the assembly. Since, however, this section is merely a re-enactment of section 19 of the ordinance respecting public health (Consolidated Ordinances of the North-west Territories, 1898, chapter 19) the undersigned does not recommend disallowance, but he suggests for the consideration of the territorial government that this section should be repealed.

Chapter 8, "An Ordinance to amend chapter 22 of the Ordinances of 1901, intituled: 'An Ordinance respecting Foreign Companies.'"

This ordinance is reserved for a separate report.

Chapter 25, "An Ordinance respecting the National Trust Company, Limited." This ordinance recites that the National Trust Company, Limited, was incorporated by letters patent in the province of Ontario, and it is enacted that the company is authorized and empowered to carry on and transact its business in the North-west Territories of Canada to the same extent as under its charter it is empowered to carry on and transact its business in Ontario. The Act is, therefore, subject to the objections stated with regard to the Ontario statute respecting the Royal Trust Company, but the undersigned for reasons already stated does not, therefore, recommend disallowance.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 5 December, 1902)

DEPARTMENT OF JUSTICE, OTTAWA, 26th November, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 8 of the ordinances of the Northwest Territories, 2 Edward VII, assented to 19th April, 1902, intituled: "An Ordinance to amend chapter 22 of the ordinances of 1901, intituled: 'An Ordinance respecting Foreign Companies.'"

This ordinance amends the Foreign Companies' Ordinance of 1901, by declaring that the provisions of the said ordinance are intended to apply only to companies incorporated to carry out or effect one or more of the purposes or objects falling within the classes of subjects in relation to which the legislative assembly has power to make ordinances. Inasmuch as the Foreign Companies' Ordinance so amended has been disallowed by Your Excellency, and the amending ordinance can have no operation except so far as it may impliedly revive the disallowed ordinance, the undersigned recommends that the said ordinance (chapter 8) be disallowed.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

Chapter 8 disallowed accordingly 5 December, 1902.

3 EDWARD VII, 1903

1ST SESSION—5TH LEGISLATIVE ASSEMBLY

(Approved 23 March, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, January 8, 1904.

These Acts may be left to their operation except chapter 14, intituled: "An Ordinance respecting Foreign Companies;" and chapter 25 intituled: "An Ordinance to amend chapter 87 of the Consolidated Ordinances, 1898, intituled: 'An Ordinance for the Prevention of Prairie and Forest Fires.'"

The undersigned proposes to further consider the former of these Acts in view of the disallowance by Your Excellency of the Foreign Companies' Ordinance, 1901, with which the present ordinance very generally corresponds.

As to the second ordinance above quoted the undersigned is submitting a separate report to Your Excellency.

Chapter 44, intituled: "An Act respecting the Toronto General Trusts Corporation."

The undersigned considers that this ordinance may be left to its operation subject to the remarks made with regard to chapter 53 of Manitoba relating to the Dominion Permanent Loan Company, the same objection applying to the present ordinance.

(Second Session)

Received by the Secretary of State for Canada on 23rd December, 1903.

The undersigned does not see any reason at present for commenting upon any of these ordinances.

The undersigned accordingly recommends that the Acts and ordinances above mentioned or referred to be left to such operation as they may have, except as to the further ordinances, which, as above stated, have been made the subject of a separate report or reserved for further report.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 10 March, 1904)

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to call attention to chapter 25 of the ordinances of the North-west Territories, assented to 19th June last, intituled: "An Ordinance to amend chapter 87 of the Consolidated Ordinance, 1898, intituled: 'An Ordinance for the Prevention of Prairie and Forest Fires.'"

This ordinance provides in effect that if a fire be caused by the escape of sparks from any locomotive engine, the person in charge, or who should be in charge, of such engine shall be guilty of an offence and liable to a penalty. This ordinance may, of course, have its application with regard to railways under the legislative control of the territorial assembly, but it is very doubtful whether it can affect railways within the exclusive legislative authority of parliament. The courts may, however, conveniently determine any such objection, and therefore the undersigned does not recommend disallowance. He recommends, however, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Northwest Territories for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

YUKON TERRITORY

1898

(Approved 14 April, 1899.)

DEPARTMENT OF JUSTICE, OTTAWA, 8th April, 1899.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Ordinance No. 4 of the Commissioner in Council of the Yukon Territory, entitled "An Ordinance respecting the Legal Profession," assented to on 26th October, 1898, and received by the Clerk of the Privy Council for Canada on 13th January, 1899.

This Ordinance provides in effect that barristers, advocates or solicitors of any of the provinces of Canada or of the North-west Territories who on 26th October, 1898, were residents of the Yukon Territory may, upon producing evidence of good character and taking the oath of office, be entitled to practise the legal profession in the said territory. They are, however, required to pay a fee of \$100 and an annual fee of \$10 thereafter, unless they happen to be advocates of the North-west Territories, in which case an annual fee of \$10 only is required. In other cases the Ordinance provides for the admission of barristers or solicitors of England, Ireland or Scotland, or of any of the provinces of Canada, or of the North-west Territories, upon production of evidence of admission and of good moral character, provided they have first been residents of the territory for a term of not less than six months, during which they shall have been engaged in the practice of their profession in the office of some qualified advocate, and shall pay a fee of \$200.

The undersigned considers that a term of residence in the Yukon Territory ought not to be required as a condition to the right to practise there, of any barrister or solicitor entitled to practise in any court in the United Kingdom, or in any of the provinces or the North-west Territories of Canada, who produces satisfactory evidence of such qualification. The present Ordinance requires six months' residence, and it may be intended to exclude such barristers and solicitors altogether, because the Ordinance seems to require that a person shall be admitted to practise before practising, and that before being admitted to practise he shall have practised in the Yukon Territory for a term of not less than six months, a condition impossible of performance.

The undersigned can scarcely suppose that the Ordinance, although perhaps so expressed, was intended to have the effect of entirely excluding these gentlemen, but since it would operate at least to postpone the right of a man, otherwise perfectly qualified, for a period of six months after his arrival in the territory, the undersigned considers it expedient that the Ordinance should not be allowed to remain in operation. He recommends, therefore, that it be disallowed, and that Your Excellency in Council, pursuant to the authority of section 8 of the Yukon Territory Act, enact in lieu thereof the Ordinance, a draft of which is hereunto attached.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Ordinance No. 4 accordingly disallowed 14 April 1899.)

AN ORDINANCE RESPECTING BARRISTERS AND SOLICITORS IN THE YUKON TERRITORY

His Excellency the Governor General of Canada, by and with the advice and consent of His Privy Council of Canada, enacts as follows:—

1. Except as hereinafter otherwise provided no one shall practice as an Advocate within the Yukon Territory unless he shall have been duly admitted by order of the Territorial Court.

2. Every person who at the time of the disallowance of Ordinance No. 4, entitled "An Ordinance respecting the Legal Profession," assented to by the Commissioner of the said Territory in Council on the 26th of October, 1898, was entitled to practise within the said Territory as an Advocate under the provisions of the said Ordinance shall continue to be entitled to practise as such Advocate.

3. The disallowance of the said last-mentioned Ordinance shall not affect nor be deemed to have affected the right or qualification to practise of any person who shall have been admitted to practice pursuant to the provisions of the said Ordinance previous to the 1st day of July, 1899.

4. The following persons and no others shall hereafter be entitled to be admitted to practise as Advocates within the said Territory, viz:—

(a) Every Barrister, Advocate, Solicitor or Attorney of any Court in Great Britain and Ireland, or of any Court in any Province of Canada or of the Northwest Territories upon filing a satisfactory certificate of his being such Barrister, Advocate, Solicitor or Attorney at the time of application, and of his good moral character, and upon payment of a fee of fifty dollars.

(b) Any law student of the full age of twenty-one years who shall have served under articles of clerkship for a period of three years within the said territory with an advocate practising there, and shall have passed such preliminary and final examinations as may be prescribed by competent authority, and who shall have filed satisfactory certificates to that effect, and of his good moral character from the advocate with whom he shall have served, upon payment of a fee of twenty-five dollars.

5. Every person hereafter admitted to practise within the said territory shall be required to take the following oath:—

"I, A.B., do swear that I will truly and honestly demean myself in the practise of an advocate in all and every of the courts of the Yukon Territory in which I shall be employed as such, according to the best of my knowledge and ability. So help me God."

6. Within the first fifteen days of January in each year a fee of ten dollars shall be payable by each advocate practising within the said territory. Such annual fee, together with the other fees, payment of which is hereinbefore provided for, shall be paid into and form part of the territorial funds.

7. Advocates of the territorial courts shall be counsel, advocates and solicitors of all the courts within the territory, and as such shall be entitled to prosecute and defend all cases therein, and shall have such seniority and precedence therein as they are entitled to in the territorial court, but nothing herein contained shall interfere with or affect the wholesome control which Her Majesty's courts are authorized to exercise over the several practitioners therein, or to prevent the court from suspending, silencing, dismissing or striking off the roll any advocate for malpractice or misconduct.

8. The several proceeding mentioned in the fourth section of the said disallowed Ordinance are hereby confirmed and made good and valid to the same extent as they were intended to be confirmed and made good and valid by the said fourth section.

9. This Ordinance shall come into effect on the first day of July, 1899.

JOHN J. MCGEE,
Clerk of the Privy Council.

Extract from a Report of the Committee of the Privy Council, approved 14 April, 1899.

On the report dated 12th April, 1899, from the Minister of the Interior, stating that amongst a number of Ordinances which have been passed by the Commissioner in Council of the Yukon Territory under the provisions of section 6 of the Act, of Victoria, chapter 6, and which have been despatched in accordance with the provisions of section 7 of that Act, to be submitted to Your Excellency in Council and to be laid before both Houses of Parliament, is an Ordinance, No. 11 of 1898, which is entitled "An Ordinance respecting the sale of intoxicating liquors and the issue of licenses therefore," which by virtue of its eighty-seventh section came into force and took effect in the Yukon Territory upon the 7th of December, 1898.

The minister further states that he has had the provisions of this Ordinance carefully compared with the provisions of "The Liquor License Ordinance," No. 7 of 1897, which was passed in that year by the legislative assembly of the North-west Territories, and that the latter Ordinance contains many provisions which restrict or control the sale of intoxicants, and which are not contained in the Ordinance No. 11 of 1898, so passed by the Commissioner in Council of the Yukon Territory, and that such Ordinance contains provisions which are not in the other Ordinance at all, and which lessen the restriction and control of the sale of intoxicants, or which have been so varied in their wording as compared with the wording of corresponding provisions in such other Ordinance, that they lead in that direction.

The minister further submits that under the provisions of the Ordinance in question, also an unlimited supply of intoxicating liquors may be permitted to be brought within the boundaries of the Yukon Territory, there being no provision to the contrary and no method of controlling it, so that the system which has been inaugurated under such Ordinance must result of necessity in the unrestricted and illicit sale of intoxicants in many parts of the territory because of its great extent, its scattered population, the nature of its country and the difficulties that will arise in watching supplies of liquor, after such supplies have been permitted to be brought into the territory.

The minister therefore recommends that such Ordinance No. 11 of 1898, so passed by the Commissioner in Council of the Yukon Territory, be disallowed by Your Excellency in Council under the provisions of the said section 7 of the Act 61, Victoria, chapter 6.

The committee advise that the said Ordinance be disallowed accordingly.

JOHN J. MCGEE,

Clerk of the Privy Council.

Extract from a Report of the Committee of the Privy Council, approved the 14 April, 1899.

On a report dated 12th April, 1899, from the Minister of the Interior, stating that amongst a number of Ordinances which have been passed by the Commissioner in Council of the Yukon Territory under the provisions of section 6 of the Act, 61 Victoria, chapter 6, and which have despatched in accordance with the provisions of section 7 of that Act, to be submitted to Your Excellency in Council and to be laid before both Houses of parliament, is an Ordinance, No. 11 of 1898, which is entitled 'An Ordinance respecting the sale of intoxicating liquors and the issue of licenses therefor,' which by virtue of its eighty-seventh section came into force and took effect in the Yukon Territory upon the 7th of December, 1898.

The minister further states that he has had the provisions of this Ordinances carefully compared with the provisions of 'The Liquor License Ordinance,' No. 7 of 1897, which was passed in that year by the legislative assembly of the North-west Territories, and that the latter Ordinance contains many provisions which restrict

or control the sale of intoxicants, and which are not contained in the Ordinance No. 11 of 1898, so passed by the Commissioner in Council of the Yukon Territory, and that such Ordinance contains provisions which are not in the other Ordinance at all, and which lessen the restriction and control of the sale of intoxicants, or which have been so varied in their wording as compared with the wording of corresponding provisions in such other Ordinance, that they lead in that direction.

The minister further submits that under the provisions of the Ordinance in question, also, an unlimited supply of intoxicating liquors may be permitted to be brought within the boundaries of the Yukon Territory, there being no provision to the contrary and no method of controlling it, so that the system which has been inaugurated under such Ordinance must result of necessity in the unrestricted and illicit sale of intoxicants in many parts of the territory because of its great extent, its scattered population, the nature of its country and the difficulties that will arise in watching supplies of liquor, after such supplies have been permitted to be brought into the territory.

The minister therefore recommends that such Ordinance No. 11 of 1898, so passed by the Commissioner in Council of the Yukon Territory, be disallowed by Your Excellency in Council under the provisions of the said section 7 of the Act, 61 Victoria, chapter 6.

The committee advise that the said Ordinance be disallowed accordingly.

JOHN J. MCGEE,

Clerk of the Privy Council.

(The ordinance was accordingly disallowed on the fourteenth day of April 1899.)

(Approved 6 August, 1899)

DEPARTMENT OF JUSTICE, OTTAWA, 17th April, 1899.

The undersigned has the honour to report that by Section 6 of the Yukon Territory Act the Commissioner of the Territory in Council is given authority to make ordinances for the government of the territory, and by the following section a copy of every such ordinance is to be despatched by mail to the Governor in Council within ten days after the passing thereof, and it is provided that any such ordinance may be disallowed by the Governor in Council at any time within two years after its passage.

The corresponding provision of the British North America Act, and of the North-west Territories Act, requires that a copy of each enactment shall be transmitted to the Secretary of State, and the established practice with regard to all the provinces and the North-west Territories is that the Secretary of State, upon receipt of a certified copy of a statute or ordinance, shall refer the same to the Minister of Justice in order that he may consider and report thereon to Your Excellency in Council. The duty of advising upon the legislative Acts and proceedings of each of the Legislatures of the provinces and the North-west Territories of Canada is imposed upon the Minister of Justice by the Act respecting the Department of Justice, Revised Statutes of Canada, chapter 21.

The undersigned considers that a similar duty devolves upon him with respect to the Ordinances of the Commissioner in Council of the Yukon Territory, and that those ordinances ought to be referred to him upon being received by Your Excellency's Government. If, as may often be the case, questions of policy in which any other department of Your Excellency's Government is specially concerned arise with respect to any of such ordinances, it would be proper for such department to submit the objections and reasons for the consideration of the Minister of Justice, as has always been the practice with regard to the Provinces and the North-west Territories; but unless an exception is to be made, which in the opinion of the undersigned is justified

neither by the constitution nor the expediency of the case, the reports to Your Excellency upon the Yukon Ordinances ought to be made by the undersigned, and he recommends, therefore, that it be made the duty of the Clerk of the Privy Council, upon receiving from the Commissioner of the Yukon Territory a copy of any ordinance, to transmit the same to the Department of the undersigned for consideration and report.

Respectfully submitted,

DAVID MILLS.

Minister of Justice.

1898 and 1899

(Approved 5 January 1900)

DEPARTMENT OF JUSTICE, OTTAWA, 11th December, 1899.

To His Excellency the Governor General in Council:

The undersigned has the honour to report that by the Yukon Territory Act, 61 Vic., chapter 6, sections 6, 7 and 8, as amended by 62-63 Vic., chapter 11, section 2, the Commissioner of the Yukon Territory in Council is given the same powers to make ordinances for the government of the Territory, as were at the date of that Act possessed by the Lieutenant Governor of the North-west Territories, by and with the advice and consent of the legislative assembly thereof, to make ordinances for the government of the North-west Territories, except as such powers may be limited by order of the Governor in Council. A copy of every such ordinance made by the Commissioner in Council is to be despatched by mail to the Governor in Council within ten days after the passing thereof, and is to be laid before both Houses of Parliament as soon as conveniently may be thereafter. Any such ordinance may be disallowed by the Governor in Council at any time within two years after its passage. Certain limitations upon this power of legislation are imposed by section 8, but it is not necessary here to enumerate these. There have been referred to the department of the undersigned, by the Under Secretary of State for Canada, copies of the following ordinances passed by the Commissioner of the Yukon Territory in Council during the years 1898 and 1899, namely:—

ORDINANCES OF 1898.

No. 1. "An Ordinance respecting the profession of Medicine and Surgery."

(Assented to 24th December, 1898.)

No. 2. "An Ordinance to amend Ordinance No. 38 of the Revised Ordinances of the North-west Territories respecting the licensing of billiard and other tables, and for the prevention of gambling.

(Assented to 8th of October, 1898.)

No. 3. "Ordinance to amend Ordinance No. 1 of 1898, respecting the Medical Profession."

(Assented to 11th October, 1898.)

No. 4. (No title.)

(Assented to 20th October, 1898.)

No. 5. "Ordinance concerning Legal Profession."

(No date.)

No. 6. "An Ordinance respecting Notaries Public."

(No date.)

No. 7. (No. title.)

(No date.)

No. 8. "An Ordinance amending Ordinance No. 7 of 1898, respecting the muzzling and transporting of dogs."

(Assented to 2nd November, 1898.)

No. 9. "An Ordinance to amend Ordinance No. 37 of the Revised Ordinances of the North-west Territories, respecting Auctioneers, etc."

(Assented to 4th November, 1898.)

No. 10. "An Ordinance respecting the suppression of fires."

(Assented to 25th November, 1898.)

No. 11. "An Ordinance respecting the sale of intoxicating liquors and the issue of licenses therefor."

(Assented to 7th December, 1898.)

No. 12. "An Ordinance to amend Ordinance No. 7, of 1898, respecting the muzzling of dogs."

(Assented to 7th December, 1898.)

No. 13. "An Ordinance for the prevention of fires."

(Assented to 7th December, 1898.)

ORDINANCES FOR 1899.

No. 5. "Respecting public health."

(Assented to 3rd March, 1899.)

No. 6. "To provide for the appointment of Commissioners for taking Affidavits."

(No date.)

No. 7. "Respecting ferries."

(No date.)

No. 8. "To amend the Yukon Medical Ordinance of 1899."

(No date.)

No. 9. "To amend Ordinance No. 13 of 1898."

(Assented to 17th March, 1899.)

No. 10. "An Ordinance for granting to the commissioner certain sums of money, etc."

(Assented to 24th March, 1899.)

No. 11. "To amend Ordinance No. 13 of 1898."

(Assented to 28th March, 1899.)

No. 12. "An Ordinance to incorporate the Yukon, Overland Express and Transportation Company."

(No date.)

No. 13. "An Ordinance respecting certain legal officers."

(Assented to 10th April, 1899.)

No. 14. "An Ordinance to incorporate the Svendsgaard Drug and Hospital Company, Limited."

(Assented to 20th January, 1899.)

No. 15. "An Ordinance to amend the Yukon Medical Ordinance, 1898, and the Liquor License Ordinance."

(No date.)

No. 15. (An Ordinance of the same number) "An Ordinance respecting the Yukon Council."

(Assented to 14th April, 1899.)

No. 16. "An Ordinance concerning the water supply of Dawson."

(Assented to 14th April, 1899.)

No. 16. (Another Ordinance of the same number.) No title.

(No date.)

- No. 17. "An Ordinance respecting the sale of liquor on steamboats."
(Assented to 14th April, 1899.)
- No. 17. (Another Ordinance of the same number.) "Respecting partnerships."
(No date.)
- No. 18. No title.
(Assented to 20th April, 1899.)
- No. 19. "An Ordinance respecting bills of sale and chattel mortgages."
(Assented to 20th April, 1899.)
- No. 20. "An Ordinance respecting the Yukon hygeia water supply."
(Assented to 20th April, 1899.)
- No. 21. "An Ordinance respecting sidewalks in Dawson."
(Assented to 29th April, 1899.)
- No. 22. "An Ordinance respecting the legal profesion."
(Assented to 4th May, 1899.)
- No. 23. "An Ordinance respecting the Dawson water front."
(Assented to 9th May, 1899.)
- No. 24. "An Ordinance respecting commissioners to make inquiries concerning public matters."
(Assented to 10th May, 1899.)
- No. 25. "An Ordinance to interpret Ordinance No. 16 of 1899."
(Assented to 22nd May, 1899.)
- No. 26. "An Ordinance respecting arrest and imprisonment for debt."
(Assented to 26th May, 1899.)
- No. 27. "An Ordinance respecting Hunker Creek ferry."
(Assented to 1st June, 1899.)
- No. 28. "An Ordinance respecting the Klondike ferry."
(Assented to 2nd June, 1899.)
- No. 29. "An Ordinance respecting intoxicating liquors."
(Assented to 3rd June, 1899.)

Of the above ordinances passed in the year 1898, No. 1, "An Ordinance respecting the profession of Medicine and Surgery," was objected to by Dr. Bruner and other physicians residing at Dawson, upon the ground that the ordinance discriminated against British Columbia and some of the other provinces, with regard to the right of physicians qualified in those provinces to become qualified for practice in the Yukon Territory. Correspondence ensued between the department of the undersigned and the Commissioner of the Territory with regard to these representations, and with the result that the ordinance in question was amended by Ordinance No. 8 of 1898, which provides in effect that the Medical Council of the Territory shall admit to registration any person duly licensed by the proper authority in that behalf to practice medicine and surgery in any province or territory of Canada, or in any British colony. This amendment seems to remove the ground of objection, and the undersigned considers that the ordinance as it stands amended, may be left to its operation.

Ordinance No. 5, intituled "An Ordinance concerning the legal profession," was disallowed by Your Excellency upon the advice of the undersigned, by Order in Council of 14th April, 1899, for the reasons stated in the report of the undersigned, and another ordinance governing the legal profession in the Yukon was by Your Excellency in Council enacted in place thereof. (See *Canada Gazette* of 15th April, 1899.)

Ordinance No. 11, intituled "An Ordinance respecting the sale of intoxicating liquors and the issuing of licenses therefor was disallowed by Your Excellency in Council on 14th April, 1899, upon the advice of the Minister of the Interior for the reasons stated in his report. (See *Canada Gazette* of 15th of April, 1899.) Therefore, although this ordinance had not been previously considered or reported upon by the

undersigned, it does not call for comment here. In this connection, however, the undersigned deems it proper to call attention to the practice which has been long established with respect to the consideration of provincial statutes and territorial ordinances, and which is specially affirmed with respect to the Yukon Territory by Order in Council of 16th August, 1899.

The other ordinances above mentioned, passed in the year 1898, may, in the opinion of the undersigned, be left to their operation without comment.

As to the ordinances above mentioned, passed during the year 1899, the undersigned observes that in Ordinance No. 7, respecting ferries, and in Ordinance No. 27, intituled "An Ordinance respecting intoxicating liquors" the word "license" is, in the copies of these ordinances which have been referred to the undersigned interpreted to mean a person holding a license. Obviously, the intention was to so define the word "license." Possibly there may be a mistake in the copies which have been transmitted by the commissioner, but such mistakes should not be allowed to occur, and if the copies transmitted be true copies, this artificial interpretation would probably lead to some difficulty and confusion. The undersigned, therefore, recommends that the matter be called to the attention of the Commissioner in Council so that, if necessary, a proper amendment may be made. And here the undersigned deems it proper to observe generally that he has noticed several other apparent mistakes, probably clerical, in the copies of the ordinances which have been forwarded from the Territory, and he desires to draw attention to the importance and necessity of having these ordinances correctly drafted, engrossed and transcribed.

Ordinance No. 16, without title or date, and Ordinance No. 19, intituled "An Ordinance respecting Bills of Sale and Chattel Mortgages," both contain retroactive provisions. The undersigned does not on that account consider it necessary to recommend the disallowance of these ordinances, but he expresses a doubt as to whether the Commissioner in Council, who is merely, in passing these ordinances, executing a delegated power, has authority to legislate retroactively. The undersigned considers, in any case, that retroactive provisions ought, if possible, to be avoided.

Ordinance No. 22, intituled "An Ordinance respecting the Legal Profession" is *ultra vires*, and ought to be disallowed. This ordinance amends the previous ordinance respecting the legal profession which had, as already stated, been disallowed on 14th April, 1899. It is probable, although the disallowance of that ordinance and the new ordinance of Your Excellency in Council which was enacted in its stead, were immediately communicated to the Commissioner of the Territory, that he had not received such communication before the passage of the amending ordinance now in question. In any case, the amending ordinance cannot have effect because it is in some respects inconsistent with the provisions made by Your Excellency in Council, and Your Excellency having previously, by ordinance, made provisions covering the same ground, the legislative powers of the Commissioner in Council as to the points upon which Your Excellency had so legislated were and are, so long as Your Excellency's ordinance remains in force, necessarily suspended.

Ordinance No. 23 intituled "An Ordinance respecting the Dawson water front" is probably *ultra vires*, as dealing with Dominion lands, a subject over which the Commissioner in Council has no jurisdiction. It provides among other things that the sheriff of the territory may upon requisition from the commissioner take possession of portions of the Dawson water front and of the bank or shore of the Yukon river, and eject therefrom all persons in possession or occupation thereof, and deliver possession thereof to such person or persons as the commissioner of the territory shall direct. The undersigned would consider it necessary to recommend the disallowance of this Ordinance, by reason of the absence of jurisdiction in the commissioner to pass it, were it not that he assumes it is intended merely to protect the water front and remove trespassers therefrom. In this view of the case, the Ordinance is harmless so far as the public interests of Canada are concerned, and the undersigned

considers that it would not be improper to leave the Ordinance to such operation as it may have.

The undersigned sees no reason to comment upon any of the other Ordinances above mentioned, passed during the year 1899. It will be noticed, however, that the undersigned has not yet received Ordinances Nos. 1, 2, 3, and 4, if any such Ordinances were passed.

Attention is directed to the fact that there are duplicate numbers in these Ordinances, as to Nos. 15, 16 and 17. Such double numbering should be avoided as it leads to confusion. The commissioner should be requested to comply as promptly as possible with the requirement of section 7 of the Yukon Territory Act, as to despatching copies of the Ordinances to Your Excellency. The Order in Council above referred to of August 16, 1899, contemplates that these Ordinances will be received by the clerk of the Privy Council, but as the section does not expressly designate the officer who is to receive these Ordinances on behalf of the Governor in Council, the undersigned considers it would not be improper to establish as to the Yukon Territory, a rule in accordance with that which prevails as to all the provinces of Canada including the North-west Territories, by which copies of their Acts or Ordinances are transmitted to the Secretary of State. The undersigned recommends, therefore, that the commissioner be instructed for the future to forward copies of all Ordinances within the statutory period, to the Secretary of State.

For the reasons above mentioned, the undersigned recommends that the Ordinances mentioned in this report be left to their operation with the exception of No. 22, "An Ordinance respecting the legal profession," and he recommends that this Ordinance be disallowed.

Humbly submitted,

DAVID MILLS,

Minister of Justice.

(Ordinance 22 was accordingly disallowed on the fifth day of January, 1900).

1900.

(Approved 15 June, 1901)

DEPARTMENT OF JUSTICE, OTTAWA, 28th May, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the ordinances passed by the Commissioner of the Yukon Territory Council, during the year 1900, and numbered from 1 to 43, inclusive, being all the ordinances for that year which up to the present time, have been referred to the undersigned, and he is of opinion that these may be left to their operation without comment, with the exception of number 32, intituled "An Ordinance relating to proceedings against officers of the Crown." This ordinance provides as follows:—

"In the case of any ordinance, regulation, rule, order, decision, direction or instruction given or made by the Governor in Council, the Commissioner in Council of the Yukon Territory, or by any minister of the Crown, or by a commissioner of the Yukon Territory, or by any person who now occupies, or formerly did occupy the position of chief executive officer of the government of Canada in the Yukon Territory, relating to the government of the Territory, or the acts or conduct of any of the officers of the government of the said Territory, nothing which has been done prior to the 1st day of July, 1900, under, in pursuance of, or in consequence of such ordinance, regulation, rule, order, decision, direction or instruction, shall be the subject of, or shall sustain or give rise to, or support any action, suit or petition or proceeding for damages against any person whatsoever."

With regard to this ordinance correspondence has taken place by direction of the undersigned, between the Deputy Minister of Justice, the Commissioner of the Yukon Territory, and the Deputy Minister of the Interior, a copy of which is submitted herewith. From this correspondence the nature of the objections to the ordinance in question will sufficiently appear, as well as the reason stated in support of it by the Commissioner and the Deputy Minister of the Interior.

The undersigned entertains no doubt that the ordinance is *ultra vires*, so far as it is intended to affect causes of action against Your Excellency's government or the ministers or officers thereof, and further the undersigned is not disposed to approve of retroactive legislation, particularly of a character so general and comprehensive as the present ordinance. It is stated by the Deputy Minister of the Interior, however, that Your Excellency in Council has passed a similar ordinance, but the undersigned assumes that the questions to which he has referred must have escaped consideration at the time. He recommends, therefore, that the matter be reconsidered, with a view to such modification of the ordinance, to be effected under the authority of Your Excellency in Council, as the necessity and justice of the case seem to require.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory and to the Deputy Minister of the Interior, for their information, and for such further action as is herein recommended.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

The Deputy Minister of Justice to the Commissioner of the Yukon Territory.

DEPARTMENT OF JUSTICE, OTTAWA, 5th December, 1900.

SIR,—In examining the ordinances of the Yukon Territory for the present year, I have observed No. 33, intituled "An Ordinance relating to proceedings against officers of the Crown," which is intended to do away with any cause of action which may have existed for anything done prior to 1st July, 1900, under and in pursuance, or in consequence of any ordinance, regulation, rule, order, decision, direction or instruction of the Yukon Council or the officers of that government.

This legislation seems objectionable as being retroactive, and as interfering without any explanation so far as appears upon the ordinance, with vested rights. I presume it was intended to apply to some particular case or class of cases. It is legislation of a very unusual character, not to be justified, I should think, except by very exceptional circumstances. Therefore, before reporting upon the ordinance, the minister would like to have your report upon it explaining the reasons for the ordinance, and the circumstances under which the council considered it justifiable.

I may add that it seems intended by this ordinance to affect causes of action arising out of regulations, orders or directions of the Governor in Council and ministers of the Crown, and the minister would like to be informed as to the reason, if any, upon which it is apprehended that the territorial council has authority to take away such rights of action.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Commissioner of the Yukon Territory to the Hon. the Minister of Justice.

COMMISSIONER'S OFFICE, DAWSON, Y.T., 7th January, 1901.

SIR,—In reply to yours of 5th December, referring to Ordinance 33, really Ordinance 32, passed by the territorial council, intituled "An Ordinance relating to proceedings against officers of the Crown," the only report I can give you is as follows:—

I enclose an exact copy of the document which was transmitted to this office from Ottawa, together with a copy of a letter received from the Deputy Minister of the Interior which accompanied it, referring to it. As to what Acts it was intended to deal with retroactively I am not aware, but it has been intimated to me that some of the Acts of my predecessor in closing the creeks against further location were considered illegal, and it was intended to bring action against the government for damages through the refusal to record claims on such creeks by parties who located and applied for record. Possibly the Minister of the Interior can give you more definite information on the matter than I can. Council passed the Ordinance at the request of the government at Ottawa, as it was directed at the time, and did not inquire particularly into the reasons for its passage.

Your obedient servant,

WILLIAM OGILVIE,

Commissioner.

DEPARTMENT OF THE INTERIOR, OTTAWA, 1st August, 1900.

Enclosure.

DEAR MR. OGILVIE.—I beg to inclose you herewith draft copy of an Ordinance which it is the wish of the minister should be passed at the earliest convenience of the Yukon council, and a copy certified and returned to this office.

This is an important matter and should be dealt with at once. Your kind attention will therefore oblige.

Yours, &c.,

JAS. A. SMART.

Wm. Ogilvie, Esq., Commissioner, Dawson, Yukon Territory.

Ordinance No.....of 1900.

AN ORDINANCE RELATING TO PROCEEDINGS AGAINST OFFICERS OF THE CROWN.

Assented to, 1900.

The Commissioner of the Yukon Territory, by and with the advice and consent of the council of the said territory, enacts as follows:—

1. In the case of any Ordinance, regulation, rule, order, decision, direction or instruction given or made by the Governor in Council, the Commissioner in Council of the Yukon Territory, or by any Minister of the Crown, or by a Commissioner of the Yukon Territory, or by any person who now occupies or formerly did occupy the position of Chief Executive Officer of the government of Canada in the Yukon Territory relating to the government of the said territory, or the Acts or conduct of any of the officers of the government of the said territory, nothing which has been done prior to the first day of July, 1900, under, in pursuance of, or in consequence of such Ordinance, regulation, rule, order, decision, direction or instruction shall be the subject of, or shall sustain or give rise to or support any action, suit or petition or proceeding for damages against any person whatsoever.

The Deputy Minister of Justice to the Deputy Minister of the Interior.

DEPARTMENT OF JUSTICE, OTTAWA, 6th February, 1901.

SIR,—I am directed to inform you that in examining the ordinances of the Yukon Territory for the last year I notice particularly No. 33, intituled "An Ordinance relating to proceedings against officers of the Crown," which is intended to do away with any cause of action which may have existed for anything done prior to 1st July, 1900, under any ordinance, regulation, rule, order, decision, direction or instruction of the Governor in Council, the Commissioner in Council, any Minister of the Crown, or officer of the government of the territory. This ordinance was considered remarkable, not only as being retroactive and interfering without any explanation with vested rights, but also as attempting to take away right of action against the government of Canada, which the minister conceived was beyond the authority of the Yukon Council to do. I accordingly wrote Commissioner Ogilvie asking for explanations to be considered by the minister before reporting upon the ordinance. The minister has just received Mr. Ogilvie's reply, in which he incloses copy of a letter from you to him of the 1st August last, inclosing a draft copy of the ordinance, and stating that it was the wish of your minister that it should pass at the earliest convenience of the Yukon Council. Mr. Ogilvie adds that the ordinance was passed upon his request, and that the council did not inquire particularly into the reasons for its passage, and he refers the Minister of Justice to the Minister of the Interior for the explanation sought. I presume this ordinance was intended to apply to some particular case or class of cases, but the minister thinks that perhaps the ordinance goes further than is necessary or was intended, and he entertains no doubt that the Yukon Council has no authority to legislate affecting causes of action against the Dominion government. The minister would like to know, therefore, what are the circumstances calling for this ordinance, and whether your department does not consider that the ordinance should be modified.

I have the honour to be, sir, your obedient servant,

E. L. NEWCOMBE,

Deputy Minister of Justice.

The Deputy Minister of the Interior to the Deputy Minister of Justice.

DEPARTMENT OF THE INTERIOR, OTTAWA, 28th February, 1901.

Re Yukon Legislation, 1900.

SIR,—In reply to your letter of the 6th instant with reference to the Ordinance passed by the Commissioner of the Yukon in Council, No. 32, and intituled 'An Ordinance relating to proceedings against officers of the Crown,' I have the honour to inform you that the above mentioned Ordinance was passed to protect against actions which might be brought in respect of the acts of police officers and others, done under stress of circumstances, which might not possibly be authorized by law, but which were in the general interest of peace and good order in the community. It is considered that it was a wise and proper thing to pass such an Ordinance. The Governor in Council passed a similar one.

It is also considered that the fact that the Yukon council has not authority to legislate in respect of actions against the federal government, would not be sufficient reason for disallowing. That phase of the Ordinance would simply be of no effect.

I have, &c.,

JAS. A. SMART,

Deputy Minister of the Interior.

1 EDWARD VII, 1901

Mr. George Craig to the Honourable the Minister of Justice.

COURT HOUSE, DAWSON, Y.T., July 9th, 1901.

SIR,—About two months ago an ordinance was introduced into the Yukon Council affecting the court stenographers, which ordinance a committee of the Council laid before the members of the local bar and the judges. I understand that the ordinance was introduced by Mr. Justice Dugas, but Mr. Justice Craig, at the request of the Bar, gave his views upon the ordinance, and it went no further at that time. This week, without notice to any one, an ordinance, in some respects similar, was passed by the Council at one sitting. This last ordinance very materially affects the fees obtained by stenographers for work done in extra hours. I have had a consultation with Mr. Justice Craig regarding the work of the courts in this connection, and he is strongly of the opinion that so long as only two judges sit in this territory, two stenographers can do all the work; in fact that even if three judges are appointed they will not sit concurrently, and two stenographers could still overtake the work. Our salaries, considering the cost of living in here, have been small, and there would be little inducement for a man competent to do court reporting to remain here, but for the additional fees obtained from copies and examinations. Up to this time the two stenographers have met all the requirements of the Bar in attending to the court, reporting examinations and copies for appeal, although we have had to work constantly very late hours at night, which, of course, we don't object to do, provided that the remuneration derived from the extra work is sufficient to compensate us for the loss of rest and health which such continuous work entails. We think it is of importance to the government that the extra cost of an additional stenographer should be saved to it, but if the fees are continued at the present rate, a third stenographer will be needed, as there will be absolutely no inducement to a man to work overtime for the small fees, and copies of appeal will have to be prepared in the ordinary office hours. I may say that the court here sits continuously with the exception of four days each month, and very often Mr. Justice Craig, to whom I am attached, sits even during that time. Of course my appointment comes from the Minister of the Interior, and if I am appointed by your department as court stenographer specially, I will still be a federal officer. The question which I wish to raise is whether since I draw my pay from the federal exchequer, the Yukon Council has any right to interfere with my emoluments. The matter not only affects me, but I think it also affects the government in the manner which I have indicated in my letter.

I may say that I have consulted with Mr. Congdon, advisor, Mr. Wade, Crown prosecutor, and other leading members of the Bar, as well as Mr. Justice Craig, who think that the fees allowed for copies are entirely too small for this territory, being very much less than the fees allowed by the rules of the court in the North-west Territories, and I may add that your department allows us 20 cents a folio. We are quite content to admit to a small reduction for first copies, and a very material reduction for additional copies, but we think the reduction, as made, is altogether too great.

I have, &c.,

GEO. CRAIG.

P.S.—I might add that of course the ordinance does not affect the fees of the stenographer in the Gold Commissioner's office; he still receives 25 cents a folio.

G. C.

Report of Mr. H. W. Newlands, legal advisor, Yukon Territory, upon Ordinance No. 26 made at the request of the Deputy Minister of Justice.

DAWSON, Y.T., 21st November, 1901.

SIR.—I beg to make the following report on ordinance No. 26. of 1901, respecting stenographers.

Section 6 of the Yukon Act provides that the Commissioner in Council shall have the same power to make ordinances for the government of the Yukon Territory as was possessed by the Lieutenant Governor and assembly of the North-west Territories at the date of the passing of that Act, except as limited by order of the Governor in Council. One of those powers is contained in subsection 10 of section 15 of the North-west Territory Act, as follows:—

“The administration of justice in the Territories, including the constitution, organization and maintenance of territorial courts of civil jurisdiction, including procedure therein, but not including the power of appointing any judicial officer.” This should be read with section 13 of the Yukon Territory Act, which is as follows:—“The Governor in Council may appoint such officers of the court as may be deemed necessary, and may define and specify the duties and emoluments of the officers so appointed.”

Under this last mentioned section the Governor in Council appointed stenographers and fixed their salaries. He did not, however, define and specify their duties nor provide for their receiving any other emolument than their salary so fixed. It would, therefore, in my opinion, be within the powers of the Commissioners in Council under subsection 10 of section 13 of the North-west Territory Act to specify their duties, and to provide at what rates they should supply copies of evidence to practitioners. These matters would come under the head of procedure in the courts, and are provided for by the assembly of the North-west Territories, either directly, or by delegating their power to the judges. Previous to the passing of this ordinance the judges of the territorial court fixed fees to be charged under sections 533 and 534 of the Judicature Ordinance.

Section 1 of ordinance No. 256 of 1901, provides for the appointment of stenographers by the Commissioner. The question, therefore, has been to consider whether that clause is *ultra vires*. If a stenographer can be considered a “judicial officer” then the Commissioner in Council had no power to pass that section. I do not think he can be so considered. None of his duties are judicial: his acts are not discretionary, but merely the mechanical taking down of evidence and transcribing the same. The Governor in Council appoints him, not because he is a judicial officer, but because under section 13 of the Yukon Act he “may appoint such officers of the court as may be deemed necessary,” and to take power to appoint additional stenographers would not conflict with this section.

Therefore, I am of the opinion that Ordinance No. 26 of 1901 is within the powers of the Commissioner in Council.

Obediently yours,

W. H. NEWLANDS,
Legal Advisor.

(Approved 25 January, 1902.)

DEPARTMENT OF JUSTICE, OTTAWA, 16th January, 1902.

To His Excellency the Governor General in Council:

The undersigned has under consideration the following ordinances of the Yukon Territorial Council, passed during the year 1901:—Nos 1 to 25, 27 to 32, 35 to 42 inclusive.

The undersigned does not consider it necessary at present to comment upon any of these ordinances except the following:—

No. 26, "An ordinance respecting the appointment of official stenographers and the taking of evidence in courts of justice."

This ordinance professes to authorize the commissioner of the Yukon Territory to appoint official stenographers of the territorial court and to define the duties of the stenographers and establish fees.

Section 13 of the Yukon Territory Act provides that the Governor in Council may appoint such officers of the court as may be deemed necessary, and may define and specify the duties and emoluments of the officers so appointed. The stenographers of the territorial court are and have been under the jurisdiction of the undersigned, and their appointments have been made or authorized by Your Excellency in Council.

A letter was received from Mr. George Craig, one of the stenographers, objecting to this ordinance, and the undersigned communicated with the Commissioner of the Territory for the purpose of obtaining information, or the views of the Council there, as to the reasons for the enactment and the propriety of its provisions. Copy of Mr. Craig's letter and of letter from the Deputy Minister of Justice to the Commissioner, together with the reply to the latter, of the Territorial Secretary inclosing copy of an opinion from the legal adviser of the Commissioner, submitted herewith. The legal adviser appears to overlook the fact that the powers of legislation conferred upon the Commissioner in Council are *subject to the provisions of the Yukon Territory Act*. It is, in the opinion of the undersigned, intended by parliament that the officers of the court shall be appointed and their duties and emoluments specified and defined by the Governor in Council. It is inconsistent with such intention that the local Council should interfere in these matters. The question as to the propriety of the ordinance, apart from the legal authority of the Commissioner in Council to enact it, upon which the undersigned principally desired information, is not referred to by the Commissioner, but the undersigned considering the ordinance to be *ultra vires*, and upon the best information which he can obtain, not desirable in substance, recommends that it be disallowed.

No. 33, "An Ordinance respecting the legal profession."

This ordinance deals with qualifications and admission of barristers and solicitors within the Territory, the fees to be paid, and the discipline of the profession. An ordinance governing these matters was enacted by Your Excellency in Council on 14th April, 1899, which is still in force. The authority of the Commissioner in Council to make ordinances is subject to such limitations as may be imposed by order of the Governor in Council. The present ordinance, therefore, is *ultra vires* of the Commissioner in Council, in so far as it is inconsistent with the ordinance of 14th April, 1899, and, therefore, to that extent it has no legal operation. It should be pointed out to the Commissioner of the Territory that he has no authority to repeal or modify ordinances passed by Your Excellency's government, and that where in such cases there is dissatisfaction with the provision made, it would be proper to make representations, but not to attempt to override the paramount provision by Your Excellency in Council. It may be that the provisions of the Territorial ordinance now in question are more suitable to the circumstances of the territory than the governing ordinance passed by Your Excellency in 1899, and perhaps steps should be taken to give effect to the Territorial ordinance. If that be the view of the Commissioner in Council, proper representations may be made to Your Excellency's government which will be considered upon the question as to whether this ordinance should be disallowed or confirmed by Your Excellency's government.

No. 34, "An ordinance respecting the procedure and practice to be observed in connection with the exercise of the civil jurisdiction of police magistrates appointed under chapter 41 of Dominion Acts of 1901, entitled: 'An Act to amend the Yukon Territory Act, and to make further provision for the administration of justice in the said territory.'"

YUKON TERRITORY

This ordinance in effect applies the procedure of the territorial court in civil matters to the courts of the police magistrates in like cases. A communication from a member of the Bar of Dawson has been referred to the undersigned in which he states in effect that this procedure is too complicated and expensive, admitting also of too many delays for a magistrate's court, where the object should be simplicity and summary disposition of causes. The undersigned is disposed to agree with this view, and he commends the matter to the attention of the local authorities who have jurisdiction to deal with the subject, and whose judgment as to the local requirements ought to be sound.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory for his information.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

(Ordinance No. 26 was accordingly disallowed on the twenty-fifth day of January, 1902.)

(Approved 26 June, 1902.)

DEPARTMENT OF JUSTICE, OTTAWA, 12th June, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to the report of his predecessor in office, of 16th January last, approved by Your Excellency on 25th January, respecting the ordinances of the Yukon Territory, and particularly to the observations upon ordinance No. 33, intituled: "An ordinance respecting the legal profession," has the honour to inform Your Excellency that he has received a telegram from the Commissioner of the Yukon Territory referring to this ordinance, stating that there is no intention to contest the right of Your Excellency in Council to pass ordinances on the subject, but that the ordinance in question is satisfactory to the profession, and that it is desirable to have same confirmed, so that the annual fee due 30th instant may be collected. Inasmuch, therefore, as this ordinance is acceptable to the local authorities and the profession in the Territory, and as the undersigned sees no good reason to object to the nature of its provisions, he recommends that the ordinance be ratified and confirmed and receive effect by virtue of the authority vested in Your Excellency in Council.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Approved 5 October, 1903.)

DEPARTMENT OF JUSTICE, OTTAWA, 14th September, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following ordinances of the Yukon Territorial Council, passed during the year 1901, viz.:—

Ordinance No. 43, intituled: "An Ordinance empowering the Northern Commercial Company to lay and maintain pipes for conducting steam for heating purposes and water (water to be used for fire protection purposes only) under, along and over the streets, alleys, highways and public places of the town of Dawson."

Ordinance No. 44, intituled: "An Ordinance respecting commissioners to administer oaths."

Ordinance No. 45, intituled: "An Ordinance to incorporate the city of Dawson," and

Ordinance No. 46, intituled: "An Ordinance to amend Ordinance No. 31 of 1901, entitled: 'The unincorporated towns Ordinance.'"

The undersigned does not deem it necessary to comment upon these ordinances. and recommends that they be left to their operation.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

2 EDWARD VII, 1902

(Approved 5 October, 1903.)

DEPARTMENT OF JUSTICE, OTTAWA, 14th September, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following ordinances of the Yukon Territorial Council, passed during the year 1902, viz.:—Nos. 1 to 32 inclusive.

The undersigned sees no reason at present to comment upon any of these ordinances, except—

No. 7, entitled: "An Ordinance respecting the Importation of and Traffic in Intoxicating Liquors."

The undersigned is not satisfied of the validity of this Ordinance, but is making inquiries, and will submit a further report upon it, and

No. 27, entitled: "An Ordinance respecting Schools."

This Ordinance, although providing (see section 24) for the establishment of a separate school at the instance of a minority of the ratepayers of any school district, whether Protestant or Roman Catholic, does not apparently make all the provisions required by section 14 of the North-west Territories Act which, having regard to section 6 of the Yukon Territory Act, as enacted by 2 Edward VII., chapter 34, section 2, limits the authority of the Commissioner in Council to make Ordinances respecting education. No representations have, however, been made to the undersigned against this Ordinance, and, inasmuch as it may be held within the authority of the Commissioner in Council, as construed with the Dominion Acts above mentioned, the undersigned considers that this Ordinance may be left to such operation as it may have.

The undersigned, therefore, does not at present recommend that any of these ordinances be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory, for the information of his government.

Humbly submitted,

C. FITZPATRICK,

Minister of Justice.

(Approved 23 March, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1904.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of the 14th September last, approved by Your Excellency on 5th October, with regard to the Ordinances of the Yukon Territorial Council passed during the year 1902, has the honour to report that he has further

considered and had correspondence with the Territorial Government with regard to Ordinance No. 7, of 1902, intituled: "An Ordinance respecting the importation of and traffic in intoxicating liquors," and he is of the opinion that this ordinance is in excess of the authority conferred upon the Territorial Council by the Yukon Act and its amendments. It is provided by 62-63 Victoria, chapter 11, section 3, that no intoxicating liquor shall be imported or brought into the territory, except by permission of the Governor in Council. It is true that by 2 Edward VII., chapter 34, section 2, the Commissioner in Council is authorized, subject to the provisions of any ordinance of the Governor in Council, notwithstanding anything to the contrary in any Act of Parliament, to make ordinances for the control and sale of and traffic in intoxicating liquor in the Territory, but this does not, in the opinion of the undersigned, authorize the local council to deal with the matter of importation.

The undersigned, therefore, recommends the disallowance of this ordinance as *ultra vires* of the Territorial Council, and he recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory, for the information of his Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

(Ordinance No. 7 was accordingly disallowed on the 23rd day of March, 1904.)

3 EDWARD VII, 1903

(Approved 29 December, 1904.)

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1904.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Ordinances of the Commissioner in Council of the Yukon Territory passed during the year 1903, and is of the opinion that these may be left to such operation as they may have.

The undersigned is informed that Ordinance No. 14, intituled: "An Ordinance respecting liens in favour of Miners," has been held *ultra vires* of the Commissioner in Council by a recent judgment of Mr. Justice Craig, of the Territorial Court. He is further informed that the Minister of the Interior proposes to recommend to Your Excellency the confirmation of this ordinance as being within the authority of Your Excellency in Council to enact, and, therefore, pending further action he does not deem it necessary to consider the provisions of this ordinance or recommend its disallowance.

The undersigned recommends that a copy of this report, if approved, be submitted to the Commissioner of the Yukon Territory for his information.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

1904-1913

Reports on the Ordinances for the years 1904 to 1913 both inclusive for the Yukon Territory approved by the Governor in Council contain no comments: the Ordinances are left to such operation as they may have.

4 GEORGE V, 1914*(Approved 12 August, 1915)*

DEPARTMENT OF JUSTICE, OTTAWA, 30 th July, 1915.

To His Royal Highness the Governor General in Council:

The undersigned has had under consideration the Ordinances of the Yukon Territory, passed in the year, 1914, and received by the Secretary of State for Canada on 16th June, 1914, and he is of opinion that these Ordinances may be left to such operation as they may have.

There are some provisions in Chapter 15 respecting joint stock companies which are questionable, or probably *ultra vires*, and moreover doubt has been suggested as to the authority of the Council to confer borrowing powers upon the City of Dawson. The undersigned does not, however, for these reasons recommend disallowance.

As to the provisions with regard to companies, litigation is now pending in the Judicial Committee, which it is hoped will result in clearing up the questions which remain in doubt as to local jurisdiction, and as to the borrowing powers of the City of Dawson, the undersigned considers that these cannot be questioned without at the same time raising doubts as to the powers of the provinces generally to authorize municipalities to borrow money, and the exercise of such powers has been of very long standing.

The undersigned considers therefore that it may properly be left to the court to consider any such objections if they be raised.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory for his information.

Humbly submitted,

CHAS. J. DOHERTY,
Minister of Justice.

1915-1920

Reports on the Ordinances for the years 1915 to 1920 both inclusive for the Yukon Territory approved by the Governor in Council contain no comments: the Ordinances are left to such operation as they may have.

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